DOCUMENT RESUME

ED 402 624 CS 215 644

TITLE	Covering Campus Crime: A Handbook for Journalists.
INSTITUTION	Student Press Law Center, Washington, D.C.
PUB DATE	96
NOTE	50p.
AVAILABLE FROM	Student Press Law Center, 1101 Wilson Blvd., Suite 1910, Arlington, VA 22209 ($2 per copy).
PUB TYPE	Guides - Non-Classroom Use (055)
EDRS PRICE	MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Access to Information; *Crime; *Higher Education; Information Seeking; Legal Responsibility; *News Reporting; *School Security; *State Legislation; Student Rights
IDENTIFIERS	Crime Awareness and Campus Security Act 1990; Journalists

ABSTRACT

This handbook provides journalists with the information--both legal and practical--to successfully confront the roadblocks that might arise when covering campus crime. After an introductory section on campus crime reporting, sections of the handbook discusses what journalists' legal right of access to campus police records, campus crime statistics, and campus court information and how to pursue that information. The handbook also discusses "turning up the heat" (public pressure, school liability for failure to warn, and going to court) and avoiding common legal pitfalls in campus crime reporting (libel and invasion of privacy). The handbook's center spread presents a "road map" for campus crime reporters. An appendix presents citation of state laws on open records, open meetings, and open police logs; a sample state open records law request letter; a list of 12 campus crime reporting resources; addresses of U.S. Department of Education Office of Postsecondary Education regional offices; and a letter from the U.S. Department of Education Office of Postsecondary Education which provides an overview of the regulatory provisions, and guidance to institutions on how to receive technical assistance in administering the campus security regulations, and the Department's enforcement policy regarding them. Contains 90 notes. (RS)

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COVERING CAMPUS CRIME

A HANDBOOK FOR JOURNALISTS

CS 215644

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A HANDBOOK FOR JOURNALISTS

Covering Campus Crime A Handbook for Journalists Student Press Law Center

UPDATES/CORRECTIONS
(as of Oct. 1, 1996)

Page 13 — In the section summarizing the Tennessee Open Police Log Law, the provision describing penalties for nondisclosure should read: **Failure to maintain and provide access to a daily campus police log as required by section 49-7-2206 is a class C misdemeanor. Tenn. Code Ann. section 49-7-2204.**

Page 14 — In the section summarizing the Virginia Open Police Log Law, the provision describing who the law applies to should read: **The law applies only to private institutions that operate a "campus police department." (Campus police records at Virginia public schools should be covered by the state's open records law, Va. Code Ann. section 2.1-340 to 2.1-346.1).**

Page 16 — Under the heading "*Who must report crimes?*", new statements by the Department of Education indicate that **even school officials who have "significant counseling responsibilities" must include crimes reported to them in the school's annual statistical report.** On September 13, 1996, the U.S. Department of Education released the results of an investigation of Moorhead State University in Minnesota, which found that the school had not complied with the Campus Security Act. In its report, the DOE stated that "officials of the institution involved in student counseling are *not* excluded from the institution's statistical reporting obligations (counselors are excluded only from the timely warning requirements of 34 CFR 668.47(e))."(Emphasis added).

Student Press Law Center

**Funded by the Sigma Delta Chi Foundation,
the educational arm of the Society of Professional Journalists**

Covering Campus Crime
A Handbook for Journalists

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FOREWORD

This publication represents the third incarnation of our published effort to help campus journalists do a better job reporting on campus crime. In 1990, we published our first booklet called *Access to Campus Crime Reports*, and in 1992 we produced a second edition of that publication. This booklet, which is over twice as long as our last effort on the topic, gives some indication of how rapidly this area of the law has developed since 1990 and how much is yet to be settled.

Special thanks go to those who made this book possible. *Covering Campus Crime, A Handbook for Journalists*, was funded by the Sigma Delta Chi Foundation, the educational arm of the Society of Professional Journalists. That funding was largely the result of support from current SPJ Campus Courts Task Force chair Gordon "Mac" McKerral and his predecessor, Carolyn Carlson. Mac and Carolyn have made the issue of public access to campus crime information a priority among professional journalists and journalism educators. They deserve our thanks for their effort.

Several members of the Student Press Law Center staff contributed much to this project. Staff Attorney Mike Hiestand organized and wrote significant portions of this booklet. Law interns Tammi Goldstein and Paul Kanter drafted sections of the book as well. Past SPLC interns Peter Schlossman, David Ransom and Jim Stallard contributed information to past editions of our *Access to Campus Crime Reports* booklet that was used in this publication as well.

An extra special thank you goes to the designer of this publication, Norman Mallard, who donated several long nights to its creation.

We also want to recognize the contributions of those who offered their comments and insight on this important topic that were included in the pages that follow. Mike Donoghue, Mac McKerral and Saunie Schuster were of special help to us.

And finally, we offer our appreciation to the student and non-student journalists who have dedicated so much energy on behalf of their readers to assure that more crime information is accessible to the public. Traci Bauer of Southwest Missouri State University, Jana Studelska of Bemidji State University in Minnesota, several editors of *The Red & Black* at the University of Georgia and Michelle Millhollon of Louisiana State University at Shreveport were among the early leaders in this effort. They forged paths that many journalists and crime victims have followed and continue to make use of to this day.

We hope this book is of help to you, whether you are a journalist for a student or non-student news medium or just a concerned citizen. If you have questions, please contact us at the Student Press Law Center.

Mark Goodman
Executive Director
Student Press Law Center
September 1996

INTRODUCTION TO CAMPUS CRIME REPORTING

CRIME AND THE PRESS

On September 25, 1690, Benjamin Harris published the first (and because authorities immediately banned it, the only) issue of *Publik Occurrences, Both Foreign and Domestik*, which some have called the first American newspaper. Fittingly, that newspaper contained what might also be considered the first American newspaper crime story: an account of Indian war chiefs, then allies of the British against the French, who "brought home several *Prisoners*, whom they used in a manner too barbarous for any English to approve." In the more than 300 years since Harris's story, the American press has played a vital role in providing the public with information about crime and the manner in which the criminal justice system and law enforcement officials have responded — or failed to respond — to it. But the job has seldom been an easy one.

Crime reporting and crime reporters often get a bad rap. Reports about crime, which frequently involve personal tragedy, are generally perceived as "bad news." The messengers of that news are sometimes blamed for the tidings they bear.

A crime reporter's job is made even more difficult by the fact that many who control the information would like to hide or shape news about crime. Countless justifications are given or implied: maintaining the integrity of an ongoing investigation, protecting the privacy or reputation of a victim or the accused, covering up inferior police work, hiding official corruption or negligence or enhancing a community's image as a safe place. No matter the reason, however, the consequences of secrecy can be devastating. Potential crime victims cannot protect themselves from dangers they never know exist.

THE SPECIAL PROBLEMS OF CAMPUS CRIME

Campus Crime in the 90's: It's Not Your Parents' Campus Anymore

The goal of campus crime reporters is really no different from that of their commercial counterparts: providing the public with the information it needs to make informed decisions about personal safety and the conduct of law enforcement and school officials.

College campuses were for many years viewed as idyllic environments, somehow magically separated from the crime problems that increasingly plagued the communities in which they were located. But evidence makes clear that the notion of the campus as a crime-free oasis is a myth; not only does crime affect colleges, in some respects America's universities have become fertile ground for criminal behavior.

The statistics can be alarming. For example, half of all victims of violent crime in 1994 were under age 25.[1] Experts estimate that one in five women will be raped while in college[2] and that one in six of all students will be victimized by some crime during their college life.[3]

According to the FBI's Uniform Crime Reporting (UCR) data, there were more than 3,000 violent crimes reported on college campuses in 1994,[4] a figure that does not include the number of violent crimes committed by or against students off-campus. Further, violent crimes, which include murder and assault, represent only a small portion of the total crimes committed on campus. Most campus incidents are property crimes such as theft. According to the UCR, there were more than 116,000 property crimes on college campuses in 1994.[5] And these numbers only reflect the incidents that are included in official reports.

Some Schools Attempt to Hide Crime

While the above statistics may be surprising to those unfamiliar with the college crime scene, they do not tell the whole story. According to a 1992 survey of campus police and security personnel by the Campus Safety and Security Institute (CSSI), 32 percent of institutions admitted they were not providing accurate information about campus crime to the public.[6] This finding supports a 1994 Southwest Missouri State University survey showing that 53 percent of college student newspaper editors believed that crime statistics provided by their schools contained inaccuracies.[7] That survey also showed that 70 percent of student newspapers requesting campus crime information were not given direct access to campus police crime incident reports.[8]

Although the reasons vary as to why so many institutions are under-reporting crime, the author of the CSSI report concluded that a primary reason was money.[9] Campus officials believed that public knowledge of accurate crime information would invariably lead to difficulty in recruitment of students and solicitation of contributions.[10]

Fortunately, an increasing number of schools seem to be getting the message that crime awareness and crime prevention go hand in hand. Clearly, students that know

about the dangers that exist on campus are less likely to be crime victims. Rather than viewing the campus media as an adversary, campus law enforcement agencies at these schools see a student newspaper or radio station as an ally in making sure warnings or other information is distributed to the campus community as quickly and accurately as possible.[11]

Unfortunately, some schools continue to do everything they can to keep crime information secret, making the campus crime reporter's job especially difficult. The Student Press Law Center continues to receive about a hundred telephone calls a year from student journalists who need help obtaining access to campus crime information. Our experience has shown that far too many colleges and universities remain "closed systems," where school officials do whatever they feel is necessary to protect the institution's image or resources, often in spite of the law or the welfare of the campus community. For reporters at these schools, covering campus crime may prove a constant battle.

It is, however, a battle that can be won. We hope this booklet will help. It should provide you with the information you need — both legal and practical — to successfully confront the roadblocks that might arise.

As you will see, the information to which you are legally entitled often differs depending on whether you attend a public or private school. Additionally, you should note that different types of information may be available depending on whether you seek it under federal or state law.

There are three general categories of campus crime information, each of which this booklet addresses in turn. The first category is **campus police records**, which include daily police blotters, incident reports and other more detailed records about specific crimes that should be available to some extent at every public school and some private schools. Next are **campus crime statistics**. Federal law requires every school in the country that receives federal funds — whether public or private — to publish an annual report listing the number of certain kinds of crimes that occur on campus. Some state laws require similar reporting. The final category is **campus court information**. Almost every school maintains a campus judicial system. Many of these bodies routinely hear cases involving allegations of criminal behavior that are never dealt with in a court of law. Currently, there is much debate over whether the records or proceedings of these campus courts should be open to the public.

This booklet describes what legal right of access to each of these categories of information a journalist has and gives some practical suggestions about how to pursue information about campus crime. For a quick look at what kind of information might be available and how you can get it, see the **Road Map for Campus Crime Reporters** diagram on pages 20-21. The following sections will explain the law on which that diagram is based.

The Real Toll of Campus Crime: The Jeanne Clery Story

This booklet focuses on the law: statutes, court opinions and agency regulations. But the real story of campus crime has little to do with law books, police stations or newsrooms. The real story begins with the people whose lives are changed forever as a result of campus crime.

In the early morning of April 5, 1986, Jeanne Clery, a freshman at Lehigh University was suddenly awakened in her dorm room. She was then sexually assaulted and brutally murdered by a fellow student she did not know. Her attacker cut her throat with a broken beer bottle, kicked her, sodomized her, bit her cheeks and breasts and then strangled her until she died. Jeanne was 19 years old.

Following the murder of their only daughter, Howard and Connie Clery discovered that there had been a number of reports of violent crime on Lehigh's campus of which the student body was generally unaware. Students who had not known about this history of campus violence had left security doors propped open and unlocked, which was how Jeanne's murderer had gained access to her room.

In 1987, in Jeanne's memory, the Clery family founded the nonprofit group Security on Campus Inc. to assist other victims of campus crime and to end the cover-up of crime on our nation's college campuses. Since its founding, the group has supported the passage of over 25 state and federal laws, including the Campus Security Act of 1990 (see pages 15-17), requiring schools to more openly disclose information about campus crime.

ACCESS TO CAMPUS POLICE RECORDS

OVERVIEW

Perhaps no information is more important to the journalist covering campus crime than the records of the law enforcement officials with jurisdiction over the school. In some cases, this may be the local city or county police force, but in many instances an on-campus police or security department fills this role. The records of these agencies are the "meat and potatoes" of most crime reporting. Unlike statistics, they can provide details about current criminal incidents that enable journalists to warn the community of immediate dangers. They also can provide a broader picture of a criminal incident including names of witnesses and locations that give a reporter the opportunity to do her own investigating to confirm the facts the police have collected. Most good crime stories rely on some information provided in a police record.

Student journalists have had significant success in recent years in getting access to campus police records. Beginning with a 1986 case filed by the student newspaper at the University of Florida at Gainesville[12] and continuing with lawsuits filed by student editors at Southwest Missouri State University in Springfield[13] and Southern Arkansas University at Magnolia,[14] courts have frequently ruled that the records of campus police and security agencies at public schools are covered by their state open records laws.[15]

There are three means by which journalists may have a legal right of access to police reports: (1) a **state open records law**, (2) a state (and some day, perhaps, a federal) **open police logs law** and (3) the **federal Campus Security Act of 1990.** Each of these avenues will be explained in turn.

IMPROVING YOUR COVERAGE OF CAMPUS POLICE

Before exercising your legal rights, it is worth examining the quality of your effort to cover the activities of your campus police. Have you attempted to establish a friendly and professional working relationship with campus law enforcement officers? Has your coverage of their work been as consistent and accurate as it should be?

Those reporters whose job it is to cover the police know that relying on the law to get the information they need should typically be a last resort. Establishing a strong police beat with a level of mutual respect between the officers and the journalist will result in a more productive exchange of information than a dozen lawsuits or freedom of information request letters. As these reporters will tell you, the most valuable information is often not on paper. Here is what the experts have to say.

In its effort to stop the cover-up of campus crime, Security on Campus has enlisted the help of other campus crime victims and their families. Among them:

The parents of Robin Reilly, a student at Saddleback Community College in Mission Viejo, Calif., who was murdered by an unknown assailant in one of the school's parking lots following an after-school musical performance at which she had volunteered to usher. Genelle and Jack Reilly, were later instrumental in successfully enacting California's campus crime reporting law.

The parents of Tom Baer, a student at the University of Tennessee in Knoxville, who was stabbed to death while trying to prevent an armed man from entering his fraternity house. Just prior to the attack, the same man had been stopped, questioned and released by campus police after he had pulled a knife on another student. Tom died with his head in one of his fraternity brother's arms.

The family of Katy Hawelka, a student at Clarkson University in Potsdam, N.Y., who was beaten beyond recognition, raped, strangled and left to die outside the school's sports arena. Never regaining consciousness, she lived for two and a half days before doctors declared her case hopeless and her parents disconnected her life support system.

Security on Campus's files are filled with many other such stories, most of which have one thing in common: the victims were unaware of campus crime dangers that existed.

We hope that this booklet will help you be the best crime reporter you can be. We also hope that it reminds you of why the job you do is so important.

Tips from the Front Line: A Veteran Police Reporter Shares Some Tricks of the Trade

by Mike Donoghue

The police beat at most professional newspapers is normally considered the most stressful assignment. It probably is no different at a college or university. You are dealing with people — police, college officials, victims, etc. — who are under stress. You, too, are under stress to produce a story, often with a short deadline.

Just like in the "outside world," school officials love to talk about a major grant won by the college or a winning season for a university team. Students and college leaders also will tell you how good and how hard they are working for students. When it comes to bad news, however, everybody runs for cover. It is often your job to overcome the stone wall that is erected.

People have a right to know about crime and how safe a campus is for students, faculty, staff and visitors. Informed people make informed decisions about their personal safety habits. Knowledge is the basis for making those informed decisions. The presence of the media at a crime scene or major incident plays an important and necessary role in meeting its responsibility in educating the public. It is also the responsibility of the media to tell the public about the performance of authorities and how they reacted to a situation.

The following are a few basic tips for dealing with law enforcement and campus officials:

Explain deadlines to campus law enforcement personnel. They need to know why you need the information now, in two hours or two days. Deadlines are different for daily and weekly campus newspapers and for the college radio or television station.

All comments made to you as a reporter should be considered "on the record." If somebody tries to use "off the record," "between you and me," or "for deep background," make sure you are in agreement as to what these phrases mean. People have different definitions.

For example, if a security guard tells you, "Off the record, there was a major theft of computers from the lab," it might mean: "Don't use this until I tell you." It might also mean, "Chase this story — it's true, but I'm not authorized to tell you." Alternatively, the tipster might let you use it but not want you to make any reference to an anonymous campus police officer as being the source. Some police/security departments are so small that leaks can easily be traced.

If you are at a public institution, know your state's freedom of information laws backwards and forwards. Some groups like the Society of Professional Journalists or a state press association have wallet-sized copies of the law. If you are a private institution, appeal to their instincts to do the right thing by voluntarily disclosing campus crime information.

Always be polite in seeking information. Use a written request under a state open records law only as a last resort. If you are too formal, the custodian of the record might make you jump through every hoop required by the law.

Make copies of any documents that might be available, especially in sensitive cases. You might not think something is important when you read it, but when you write your story it might become a key point.

Check the numbers. Some colleges and universities provide the full police log. Many private institutions, however, provide only a breakdown of what they think is important. Some major incidents are deleted because college administrators believe they put the school in a negative light. If you get a police log, try to check the case numbers assigned to each complaint. Complaints or cases are normally assigned numbers in numerical order. If one is missing from the log or list you are given, don't be afraid to ask about it. Don't easily accept an excuse that the record is not available or is locked up. Records can usually be "found" when necessary.

Get out of the newspaper office or radio/TV station and go down to the campus police station. Don't expect campus police to make news judgments for you. Some campus police telephone lines are tape-recorded. Somebody who might want to give you a tip is less likely if the line is recorded. You will often learn the most simply by hanging around the police office. (And don't be afraid to bring an extra soda or coffee to share when you stop by!)

Ask the right questions. If you contact the campus police office every day and ask, "Is anything happening?" it is too easy for them to simply say, "No." Instead, ask an open-ended question like: "What's the most important thing (or three most important) things the department has done in the last 24 hours?"

Quote people by name. Don't attribute everything to, "Police said." Names make news. You like to see your byline, don't you? Well, cops like to see their names in print, also.

Always understand the statistics you are given. Under the Student Right-to-Know and Campus Security Act certain statistics must be provided each year. People are amazed that some institutions are able to report no arrests were made for liquor, drug or weapons violation. A drug-free and danger-free campus? No, it's just that the security department at that school is not authorized to make arrests.

In a tragedy, never ask a victim's family, "How do you feel?" Learn something positive about the victim before you approach family or friends. The family will respect you more if you are able to say up front that you knew the victim was "a history major and a real leader for the field hockey team."

Look to other sources, including public records. One private college president once said that two on-campus rapes were confidential and could not be discussed. Yet, down the street at the courthouse the case was spelled out in public court records, including the names of the victims and witnesses.

Try to develop a relationship with the local police before you have to do it in the heat of battle. That way you are likely to get information the college is not inclined to release. The local police department will usually either be handling the case, assisting the college police, or at least have the information, composite photograph or other material that will be helpful to you. Neighboring departments might also have the information. Don't be afraid to play to their sense of justice. "The paper wants to make sure the person responsible is caught. We'll run the composite or any information." Unfortunately, some colleges and universities have a "circle the wagon" mentality. They don't realize that when they try to hide things, journalists by nature tend to dig deeper, wondering what else is hidden.

Don't be afraid to turn to the local media to help you dig out the story. If you are stonewalled by the college or university, the school may be less likely to offer a "no comment" to the local daily newspaper when one of their reporters calls about a rape, major theft or serious assault on campus. The local reporter might also be able to help you with possible sources to check. In return, you can be a valuable campus resource for the local newspaper or electronic outlet. It's a two-way street.

If you are denied access to records, don't be afraid to write about it. You can also share the story of the denial with the local news media, which may also have an interest in the story. It might be interesting to see if local reporters are denied the same information.

Don't compromise your position as an ethical, independent observer. Even if the police lie to you, don't think it is acceptable to lie to them.

Join up. Consider having your media outlet support one or more of the following: Student Press Law Center, Society of Professional Journalists or the Reporters Committee for Freedom of the Press. They can provide needed resources and help if you run into roadblocks.

Mike Donoghue is an award-winning journalist with The Burlington *(Vt.)* Free Press. *He has worked as reporter for over 27 years, much of it as a police/court reporter. He is also an adjunct professor in the journalism department at St. Michael's College and a co-adviser to its award-winning student newspaper,* The Defender. *Donoghue is asked to speak frequently on police-press relations and public access issues. He is the Vermont chair for Project Sunshine, a 50-state effort by the Society of Professional Journalists to ensure public access to records. He can be reached at (802) 660-1845 or at (802) 654-2442.*

Other Police Reporters Weigh In

"There's no better way to get information out of police than to cultivate sources and to always work on fostering better relations. (I don't mean pander to them, just be professional and polite). You can pick battles and pull rank by going higher and higher up the chain of command, but do it sparingly. Far better is working on solid relationships with people like the shift commanders and foot soldiers. It can mean doing the occasional feature on police dispatching or a story on school drug-awareness class as well, since it keeps them from yelling back at you that you never cover 'positive' law enforcement-related stories."

— Liz Anderson, cops/courts reporter, *The Rutland* (Vt.) *Herald*

"Remember that cops are human beings, too. If they do not trust you, and many do not trust the media, then they will not give you the information.... Talk with them. Get to know them. Give them an opportunity to see that you are human, too.... A great way to get in good with campus cops is to do a feature on them. They are a fixture on campus. What makes them tick? Ride-alongs are great. Hang out with a shift. It is a good story and a great way to give yourself some credibility."

— Matthew Waite, special projects\CAR reporter, University of Nebraska *Daily Nebraskan*

"Make friends with the EMS (emergency medical service) guys. They know about the nasty stabbings, quadruple shootings and people who mysteriously wound up with broken arms and bruises after being arrested for loitering. Also, in most places, someone accused of a crime has to make a court appearance within 24 hours. Your local magistrate's docket can clue you in to a lot of stuff that the cops forget to mention."

— Geoff Dougherty, staff writer *The* (Bergen, N.J.) *Record*

"Always carry a pack of cigarettes to share — even if you don't smoke. Or a pack of gum. You'd be surprised at how many times this has opened up a source at a crime or fire scene."

— Adam Gorlick, reporter
Springfield (Mass.) *Union News*

"Be where the cops are as much as you can and talk to them like they're people, not like they're cops. I really am extremely interested in what they do and I think that comes through when I deal with them.... The other thing I've learned is that if you get the facts right, you eventually earn respect. If you don't, nothing else will help you."

— Melissa Moore, police reporter,
The (Baton Rouge, La.) *Advocate*

USING STATE OPEN RECORDS LAWS

Each of the 50 states and the District of Columbia has an open records or "sunshine" law that guarantees the public access to certain government records. These laws can be the most valuable ally you have in your effort to uncover campus crime. In short, most open records laws require that records generated by a public body or agency be open to the public unless they are otherwise — and specifically — exempted by law. Even where a specific exemption does exist, most laws still leave disclosure up to the individual government official. In other words, an official usually can disclose exempt records, but is not required to do so.

The laws vary from state to state regarding the type of law enforcement records that must be disclosed. Some laws are much better in granting access than others. A comprehensive survey of each state's law is beyond the scope of this booklet. The best we can do is to give you the citation for the law in your state (see Appendix, page 33) and urge you to get a copy of it from a library, courthouse, your state press association or a local commercial newspaper. The Reporters Committee for Freedom of the Press publishes an excellent and inexpensive resource on using individual state open records and meetings law called *Tapping Official Secrets*. Each individual state booklet contains the text of that state's law and a local media law attorney's practice tips and analysis of relevant court decisions and attorney general opinions. (See Appendix, page 37 for contact information.) Finally, a number of state freedom of information laws and other resources to help you use them are now available on the Internet. (See Appendix, page 38.)

The following three-step process will help you determine how you can use your state open records law to get access to campus police reports.

STEP 1: Are Your Campus Police Covered?

In using a state open records law, the first question you must answer is whether the law applies to your campus police or security department. In other words, can it be considered a "public body?" To answer this, you will need to know what kind of law enforcement or public safety agency you are dealing with. Public safety and police agencies on college campuses vary widely across the country. The type of campus law enforcement organization a student journalist will encounter in pursuit of crime reports can be influenced by several factors, such as whether the college or university is public or private, urban or rural, has a large or small student population, and whether the student body is made up primarily of campus residents or commuter students.

To determine whether your state open records law gives you the right to examine campus police reports, use this guide:

(1) If you are at a **public college or university and the campus police are employees of the school,** the answer is almost always clear. Your campus police or security force should be considered a "public body" subject to your state's open records law. As such, you should have the same access to that department's campus crime reports as you would have to the records of your city police or any other public law enforcement agency.[16] This is so even if your security officers do not carry guns or cannot make arrests. Skip to "STEP 2: Determining What Records May be Available."

(2) If you attend a **public college or university where security services are contracted through a private company,** chances are very good that any campus crime records compiled by that security company are open, as required by the state open records law. (See discussion of "Contract Security Units.")

(3) If you are at a **private college or university where the campus police have "law enforcement authority"** their records should also be open. The authority to act as a real law enforcement agency should make a campus security department subject to the state open records law. (See discussion of "Law Enforcement Authority.")

(4) If you are at a **private college or university with a campus security department that does not have law enforcement authority,** you might still be able to claim that they are subject to the open records law depending on the language of your state statute and the role the public safety force serves. But you may have to use more

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creative methods of obtaining the crime information and accept that the law may not require your school to provide some of the information you need. Also, remember that a state's open records law is just one tool for gaining access to campus crime information.

CONTRACT SECURITY UNITS

Some public colleges and universities contract with private companies for security on campus rather than or in addition to employing their own police officers. Since government employees therefore may not be technically involved in the day-to-day activities of campus law enforcement, including making crime reports, a question arises as to whether such bodies are "public" and their reports public records. A strong argument can be made that a school cannot avoid its responsibility to disclose campus crime information by delegating its duty to a third party.

Although some state statutes are silent on this issue, many others have included in their freedom of information laws language indicating that the records of a private company, produced in relationship to its execution of services on behalf of a government agency, are open to the public. These states can be divided into three categories.

First, several states, including Alaska,[17] Hawaii,[18] Iowa[19] and Wisconsin,[20] explicitly provide in their open records law that some records of private organizations under contract with the government are public records. In addition, Tennessee specifically includes "contract employees" as among those covered by its open police logs law.[21]

A second group of states requires disclosure of the records of private security forces under contract with public colleges and universities because they are supported by public funds. States that use this criteria include Arizona,[22] Michigan,[23] and Virginia.[24]

Finally, some states classify the records of private organizations that serve governmental functions as public records subject to the freedom of information laws. These states include Arkansas,[25] Florida,[26] and New York.[27]

Students at public college campuses that contract with private security companies should check their state's open records laws to determine if the crime reports produced are public records under the law.

"LAW ENFORCEMENT AUTHORITY" AT A PRIVATE SCHOOL

State freedom of information laws should cover the police departments of private colleges and universities if they operate as a body with law enforcement authority. According to Douglas Tuttle, director of public safety at the University of Delaware and president of the International Association of Campus Law Enforcement Administrators, a private college police department serves as a law enforcement unit if either (1) state, city or county legislation or ordinance grants law enforcement authority to the campus police or (2) local law enforcement agencies deputize the campus police officers.

Several states and local legislative bodies have enacted statutes that expressly grant law enforcement authority to the campus police departments of private colleges and universities. For example, the campus police departments of the University of Pennsylvania, Marietta College and Rice University operate as law enforcement units under the statutes of Pennsylvania, Ohio and Texas. Oklahoma law explicitly provides that private school police forces are "public agencies."[28]

In states lacking a statutory grant of law enforcement authority, private university police departments may qualify as law enforcement units if local police deputize the officers or if the campus police otherwise exercise police powers traditionally reserved to government law enforcement agencies, such as carrying guns and making arrests. For example, the campus police forces at the University of Miami and Yale University operate as law enforcement units because the Coral Gables, Fla., and New Haven, Conn., police departments deputize their officers.

To find out the enforcement authority of security personnel at your school, including their working relationship with state and local police agencies, you need only ask. Federal law now requires all schools receiving federal funds to prepare and distribute a statement with this information to every student.[29]

Students at private colleges and universities whose police departments operate as law enforcement units either by statute or deputization should have access to crime reports to the extent provided by their state freedom of information laws.

STEP 2: Determining What Records May be Available

COMMON TYPES OF POLICE RECORDS

While different police and security offices will have different names for the various crime records that they keep, there are five general types of records that journalists will find helpful:

(1) **The daily police blotter or incident report log.** This is a daily summary of every incident the office responded to or was called about. It is often compiled by the police dispatcher. It will usually give a brief description of the incident as well as the time and the

place where it occurred. Because of the limited information it contains, a blotter is useful mainly as a starting point for asking additional questions.

(2) **Incident reports.** These are the more detailed reports that are created by the officer or officers who actually responded to the incident. They will usually give the names and addresses of the individuals involved in the incident, if known, and will provide a longer narrative of what happened. This is often the most valuable document for finding the details of the incidents you want to cover.

(3) **Investigation Reports.** In addition to the initial response of law enforcement officials, some crimes — particularly those where a suspect is not immediately apprehended — require additional police work. Documents and evidence generated by such work all become part of an investigatory record file. Because such records may contain active leads or other information whose release might jeopardize an ongoing police investigation, many state laws have specific provisions that exempt such records from mandatory disclosure. While the reasons for an "ongoing investigatory records" exemption make sense, experience has shown such exemptions to be among those most frequently abused by law enforcement officials. If you believe that to be the case in your situation, challenge such conduct.

(4) **Arrest or Booking Log.** This is a record of all individuals who are charged with crimes. Only police offices that have arrest powers will have this kind of log, but if they do, it can be an important source of information for stories about individuals accused of breaking the law. This log will give the name, address and age of someone accused of a crime as well as the charge against him.

(5) **Miscellaneous Crime Records.** In addition to the above, law enforcement officials sometimes maintain a number of other records that may, from time to time, prove useful. Among them:

• Accident Reports: Reports of motor vehicle accidents or other "emergencies" to which the police responded are open under most state open record laws. Note, however, that specific medical information about an individual is frequently exempt.

• 911 Tapes/Transcripts: While it is doubtful that such records will be maintained by a campus police force, tapes (or transcripts of tapes) of telephone calls made to a central emergency office are usually maintained by and available through local law enforcement agencies.

• Criminal Histories: The availability and type of information about an individual's criminal history varies considerably by state. Under some state laws, all such information is open to the public. In others, no information is open. Where it is available, it is generally maintained by a central state office.

• Safety Policies/Security Budget Reports: Federal law requires all schools receiving federal funds to provide information about certain campus security policies and programs, including a statement indicating the "enforcement authority" of a school's security personnel, crime reporting procedures, policies concerning access to campus facilities and crime prevention programs.[10] In addition, information about a public schools' campus police force budget would be available under virtually every state's open records law.

EXEMPT INFORMATION

Remember that although it never hurts to ask for information, you may not always have a legal right to obtain it. Even though a record is held by a public body and is, therefore, a public record by definition, every state open records law contains a list of exemptions. As discussed above, for example, most states allow police to deny access to their records if public disclosure would jeopardize an ongoing investigation. Most states also allow police to black out the names of confidential police informants or the parts of a record which might jeopardize the work of undercover police agents. Additionally, police might not be required to release the names of the victims of certain crimes, particularly sexual assaults. Their ability to deny you information in these situations will depend on the specific provisions of your state open records law. There is, for example, no universal requirement that the names of victims or complainants be withheld. You should consult your open records act to determine what reports, by law, must be made available to you. It is important to remember that the law presumes all records held by a public body are available for public inspection. The burden is on the record keeper or custodian of the record to justify why the law allows the information to be withheld.

Also, most laws provide that if a record contains both exempt and non-exempt material, the custodian is required to redact (remove or black out) the exempted material and release the rest. This is important to remember, especially with police records where officials have been known to improperly deny access to an entire report when its release could be accomplished by blacking out a single piece of information.

If the law in your state makes clear you do not have a legal right of access to something and your campus public safety office is aware of that, it is pointless to continue to maintain that you do. But that does not mean

you should not try to persuade your school that there are many good reasons for giving you the information anyway.

STEP 3: Requesting the Records

Once you have determined that your school's campus police is a "public body" and have decided what information you need and believe you are entitled to under the law, it is time to make your request.

MAKING AN ORAL REQUEST

The first thing you should do is simply ask, professionally and politely, for the records you want. Most state laws say that all you have to do is go to the person responsible for keeping the records you seek and ask for them. In most cases they are required to comply with your request at all times during their normal business hours.

When you call or arrive at the office where the records you want are kept, you should identify yourself and your affiliation with the news medium you represent and ask to speak to the individual responsible for handling press inquiries. If no such person is designated, ask to speak to the person who assembles the police blotter or oversees the incident reports.

Requesting police records need not and should not be adversarial. Treat the official with respect. Address him or her appropriately as "Chief Smith," "Officer Jones" or "Ms. Doe." Smile. As discussed earlier, the job of a crime reporter is generally made much easier — and the information made available to you much more quickly — when there exists a climate of mutual respect, or at least tolerance, between you and the police.

MAKING A WRITTEN REQUEST

If your oral request was denied or ignored or if history tells you that there is little hope that officials will comply with a verbal inquiry, it is time to start "The Paper Trail" by putting your request in writing.

To assist you in this, we have reproduced a sample freedom of information law request letter, containing the basic information you should include in your request, in the Appendix (see page 36). (An automatic freedom of information request letter generator is scheduled to be available at the Student Press Law Center Internet website beginning in the fall of 1996.)

If your oral request was to someone other than the head of the campus public safety office, direct your first written request to the chief. Put it in the form of a letter and mail it certified mail, return receipt requested or hand deliver it. Most laws only require that you "reasonably describe" the records you are seeking. Nevertheless, you should make your request as specific as possible and do what you can to provide officials with the information they need to find the information you are looking for. Be sure to cite the relevant open records law.

State that if your request is denied, you would like to know why. Most state laws require that officials provide a written explanation, with citations to the specific legal exemption(s) on which their decision is based. Other states, such as Texas, require any state agency denying an open records request to immediately ask for a state attorney general's opinion on the matter. If your state is one of these, include that in your letter. If your state law requires the agency to respond to your request in a certain period of time, make sure you include that as well. Also, ask that you be given any reasonably segregable portion of the record if parts of it may be exempt from disclosure.

Explain that you are willing to pay a reasonable fee for the copying costs of the records if you are asking for copies, and state the maximum amount you will pay without first being notified. If you are asking for a fee waiver, include that, too.

Make clear that you intend to pursue whatever legal remedy is necessary to obtain the information if your request is denied. Also note any penalty provisions under the law for failure to release public records. Such penalties could include fines and awards of attorneys fees.

What To Do If You Are Denied Access

If the campus police refuse to give you the records you request, be prepared to respond. If the police agency is subject to the state open records law, inform the custodian of the records that you do not understand the denial because you know the records are public under state law.

If the record keeper continues to say no, ask that she cite the specific legal exemption on which she bases the denial. Make clear that you are not just looking for an explanation; you want a legal justification.

This is the point where you hope record keepers begin to think you know more about what you are entitled to than they do. They may not know why they are denying access. Their only reason might be that it does not seem as if they should have to give the information to you, a student. They may think they are following the law, or they may never have had to deal with such a request before. Remember, be adamant but courteous. Give them room to back down without losing face.

If you still do not get what you want, get the name of the custodian of records and inform him that you will

be filing a formal appeal with his immediate supervisor and, if necessary, the college or university president and any other relevant school or government officials. You might also let them know that you will have to include in your news story that the campus police refused to give you access to public records about crime.

THE APPEAL LETTER

Your letter of appeal should include the same information as your initial written request, but also should briefly describe how you were denied access in your initial request to the public safety office. Include the names and titles of all those who denied you access and the date their denial occurred.

If any of those who denied your request up to this point did cite a specific justification for the denial, state why you believe that explanation is insufficient under the law. This may be a good time to consult with a local media law attorney, the Student Press Law Center or some other resource that specializes in freedom of information law for help in formulating your response.

When the Law Does Not Apply

Even if the police force on your campus is not required to release specific crime records because the open records law does not apply to it, the college reporter should not despair. Indeed, in light of the growing concern about safety on campuses as well as the potential liability faced by schools who shirk the responsibility they have to protect their students (see "Turning Up the Heat" page 26), administrators might be convinced of the importance of cooperating with the news media to promote student safety. Further, as the next chapter will explain, almost every school in the country is now required to provide at least *some* information about their campus crime situation. Once you have at least some information, you often have the leverage necessary to convince school officials to be even more forthcoming. As attempts to cover up the reality of campus crime have been exposed, more and more school administrators have learned the hard way that being open with information about campus crime is the best strategy.

USING STATE OPEN POLICE LOG LAWS

What Is an Open Police Log Law?

Six states — California, Massachusetts, Pennsylvania, Tennessee, Virginia and West Virginia — currently provide access to the daily logs of college and university police departments. Other states — and the federal government (see sidebar below) — are considering similar legislation. A daily log chronologically details all reports of campus crime, usually including the time, date, location and general description of the incident. While traditional state open record laws should already require disclosure of this information at public schools, most of these laws require private schools to do so as well.

Don't Accept "The Buckley Amendment" as an Excuse!

One of the biggest obstacles to effective campus crime reporting has been eliminated. In July 1992, President Bush signed into law a provision that prevents schools from citing the Family Educational Rights and Privacy Act of 1974 (FERPA),[21] commonly known as the Buckley Amendment, as an excuse for denying access to campus police or security department records.

The Buckley Amendment was passed over twenty years ago in part to curb the indiscriminate release of student records by school officials. Under the law, schools that release a student's "education records" without his or her permission can have their federal funding cut off.

The controversy surrounding FERPA has focused on what is an "education record?" Despite court rulings to the contrary, many schools, at one time with the support of the U.S. Department of Education, claimed that the definition of "education records" included campus police and security department reports. As a result, they denied such information to the student media and public.

The amendment to FERPA signed in 1992 states that "education records" do not include "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement."[22] Subsequent regulations make clear that the term "law enforcement unit," is to be interpreted broadly and includes even campus security offices without official police authority.[23]

While the change to the Buckley Amendment does not require schools to release campus police records, it does mean that they must now find another excuse not to do so.

Also, while not technically an open log law, Georgia law makes it easier for students to track crime on campus. Under Georgia Code Annotated section 35-3-36, state and local law enforcement agencies must indicate on their crime reports if the crime victim was a student and the name of the school that the student attended. Such a provision should allow student reporters to more quickly sort through police reports searching for incidents that might be relevant to the campus community.

State-by-State Analysis

CALIFORNIA

(Cal. Ed. Code sections 67380 and 94380)

Who does the law apply to?

Section 67380 applies to community colleges that have received legislative funding for the purpose,[34] California State University, Hastings College of the Law, the University of California and all post-secondary institutions with more than 1,000 students that receive public funds for student financial aid.

Section 94380 applies to private post-secondary institutions with more than 1,000 students and private vocational educational institutions.

What kind of information is available under the law?

Under section 67380, logs must detail occurrences and arrests for campus crimes of violence, hate violence, theft, destruction of property and illegal drug or alcohol use. Under section 94380, logs must detail occurrences and arrests for campus crimes of violence, theft, destruction of property and illegal drug or alcohol use.

How is the information obtained?

Under section 67380, students, employees, applicants for admission and the media may request the logs from their custodian who must disclose the information within two business days.

What are the penalties for nondisclosure?

Under section 67380, a person who is refused information may sue in a civil action for damages of up to $1,000. Section 94380 provides no penalty for nondisclosure.

MASSACHUSETTS

(Mass. Ann. Laws, chapter 41, section 98F)

Who does the law apply to?

The law, in conjunction with the state open records laws, applies to all public and private schools whose law enforcement officers have been deputized by the state.

What kind of information is available under the law?

The logs must list all responses to complaints received by the police, crimes reported, the names and addresses of persons arrested and any charges against those persons, unless the crime involves a handicapped person.

How is the information obtained?

The logs are available to the public without charge during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

Nondisclosure can result in a fine of $20 per month until the police disclose the logs as well as the award of attorney fees and court costs. (Mass. Ann. Laws, chapter 66, section 15.)

PENNSYLVANIA

(24 Penn. Stat. Ann. section 2502-3)

Who does the law apply to?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The logs must include a chronological listing of all crimes reported to the campus police, the names and addresses of anyone arrested and a description of charges filed.

How is the information obtained?

The information is available to the public without cost during regular business hours and at all other reasonable times.

What are the penalties for nondisclosure?

The Attorney General can compel compliance in a civil action where the public official can be liable for a penalty of up to $10,000 for willful violation of the law.

TENNESSEE

(Tenn. Code Ann. section 49-7-2206)

Who does the law apply to?

The law applies to institutions of higher education that maintain either police or security departments composed of state, private or contract employees.

What kind of information is available under the law?

The log must include the date, time, general description and the names of all persons arrested for crimes against persons or property. The logs need not include the names of persons who reported the crime, victims, witnesses or suspects.

How is the information obtained?

The log is open for inspection without charge to the public during regular business hours.

What are the penalties for nondisclosure?

The law does not include a specific penalty provision.

George Mason University Police Department

Daily Police Incident Record

0700 Hours to 0700 Hours the Following Day

Date	Time	Location	IN or PENDING	Incident to include: Case #, Nature #, Nature of Case, Brief Description
080296	0645	HQ		B-SHIFT ON DUTY.
	0715	HQ		A-SHIFT OFF DUTY.
	1400	CAR	PEND	96-0729 - ASSAULT. SUBJECT GRABBED FEMALE EMPLOYEE BY THE ARM AND THEN LET GO. SUSPECT DESCRIBED AS W/M, 50-60 YOA W/ A BALD SPOT. SUBJECT HAS BEEN SEEN IN AREA AND IS BELIEVED TO BE LIVING ON CAMPUS. INVESTIGATION CONTINUES.
	1445	HQ		C-SHIFT ON DUTY.
	1515	HQ		A-SHIFT OFF DUTY.
	1525	POHICK AND PATRIOT	IN	FR96-065 HIT AND RUN. AN UNKNOWN VEHICLE FAILED TO STOP COMPLETELY AND PULLED IN FRONT OF A CUE BUS. THERE WAS NO CONTACT BETWEEN VEHICLES BUT WHEN THE CUE BUS STOPPED QUICKLY TO AVOID THE UNKNOWN VEHICLE, A PASSENGER WAS THROWN FROM HIS SEAT. HE WAS TRANSPORTED TO ACCESS FOR TREATMENT. CHARGES PENDING.
	2245	HQ.		A SHIFT ON DUTY.
	2315	HQ.		C SHIFT OFF DUTY.
080396	0645	HQ		B SHIFT ON DUTY.
	0715	HQ		A SHIFT OFF DUTY.

A typical daily police blotter maintained by a university police department. Such blotters, or logs, can be used as the starting point for obtaining more specific information and records about criminal activity.

VIRGINIA

(Va. Code Ann. section 23-232.2)

Who does the law apply to?

The law applies to all public and private campus police departments.

What kind of information is available under the law?

The log must include the date, time, general location, any injuries suffered or property damaged or stolen and the names and addresses of anyone arrested for felonies or misdemeanors involving assault, battery or moral turpitude. Information may be withheld if necessary to facilitate an ongoing criminal investigation.

How is the information obtained?

Any citizen, student or parent may obtain the information during the regular business hours of the custodian of the log.

What are the penalties for nondisclosure?

The law does not include a specific penalty provision.

WEST VIRGINIA

(W. Va. Code section 18B-4-5a)

Who does the law apply to?

The law applies to all public and private institutions of higher education.

What kind of information is available under the law?

The log must include the nature, date, general description and time of all murders, rapes, aggravated assaults, burglaries, car thefts and arrests for liquor, drug or weapons law violations committed on campus. The identity of the victim need not be revealed.

How is the information obtained?

The public must have access to the information within 10 days of the log entry unless nondisclosure is required in order to facilitate an ongoing investigation. The information may not be withheld after an arrest. Students at a public school should seek access under the regular state open records law, which requires disclosure within five working days.

What are the penalties for nondisclosure?

According to the West Virginia Attorney General's office, a member of the public who is denied access may file a writ of mandamus to compel disclosure. The court may award attorney fees.

USING THE "TIMELY REPORTS" REQUIREMENT UNDER THE CAMPUS SECURITY ACT OF 1990

There is a very important — and underutilized — provision of the federal Campus Security Act of 1990[34] (the entire law is discussed in detail below) that should provide a significant key to unlocking information about campus crime, particularly for students at a private school. In addition to an annual statistical report on campus crime, the Campus Security Act requires that all schools that receive federal funding also make "timely reports to the campus community on crimes considered

Coming Soon? Federal Open Police Logs Act

In September 1995, Rep. John Duncan (R-Tenn.) introduced the Open Campus Police Logs Act of 1995 in the U.S. House of Representatives. If enacted, the bill would require public and private universities nationwide to disclose the daily logs of their campus police or security departments.[35]

In June of 1996, a subcommittee of the House Committee on Economic and Educational Opportunities held hearings on the bill, which had at least 32 co-sponsors. Other proposals — some of them providing even more access to campus crime information than the Duncan bill — were also being considered for introduction in the future.

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to be a threat to other students and employees that have been reported to the campus security office or the local police department." "Such reports," the law states, "shall be provided to students and employees in a manner that is timely and that will aid in the prevention of similar occurrences."[37] The release of such information does not violate the Buckley Amendment.[38] Failure to comply with the "timely reports" requirement can result in the forfeiture of federal funding.

"Timely reports" is not defined by the statute and the Department of Education has stated that the need for and content of such reports must be decided on a case-by-case basis.[39] However, given that the purpose of the requirement is to enable the campus community to protect itself from potential future harm, it can strongly be argued that any significant amount of time that passes between when a crime that could present an ongoing threat occurs and when the public is notified violates the law's intent. Where a "timely report" is not made, reporters should demand that school officials provide an immediate explanation. In addition, a formal complaint noting the violation should be filed with the Director of the Regional Office of the Department of Education that serves the state in which the institution is located. (See the Appendix for contact information.) Probably because it is buried within a much bigger law, very few schools have been "pushed" by the campus news media or others to comply with the "timely reports" requirement. That should change. There is enormous potential in this provision if it is used.

ACCESS TO CAMPUS CRIME STATISTICS

USING THE CAMPUS SECURITY ACT OF 1990

Where access to daily information about particular crimes is not needed or where the law does not afford such access, almost all students can look to federal law for help in obtaining at least a snapshot of their school's campus crime problem.

By now, most college journalists have at least heard of the Campus Security Act of 1990,[40] a federal law whose stated purpose was to make available more information about criminal activity on America's college campuses. The law sought to achieve this goal primarily by requiring colleges and universities to compile, publish and distribute an annual report that would provide information on the number of serious crimes that occur on their campuses. Campus crime awareness, the law's supporters argued, was the first step toward combating what Congressional findings indicated was a serious and growing problem: an increase in campus crime accompanied by a decrease in the accurate reporting of that crime by school officials.[41]

Unfortunately, the effectiveness of the law has been hampered both by genuine confusion about what the law requires and the continued efforts of some school officials to keep their crime information secret. In an attempt to clarify some of the law's provisions and provide for greater compliance, the U.S. Department of Education issued formal regulations in April 1994[42] and June 1995[43] and a "Dear Colleague" letter in May 1996, which is reproduced in the Appendix. Recently, the Department of Education itself has come under mounting criticism from Congress for what has been called its lax enforcement of the law.[44] This has led to the introduction of a resolution calling for the Department to take more aggressive steps to insure that schools are accurately reporting campus crime.[45]

Although the "kinks" are still being worked out, student journalists do themselves a favor by becoming familiar with the law's basic operation and requirements. This short guide should help.

What is the Campus Security Act?

A federal law that requires almost all public and private colleges and institutions of higher learning to collect and report information about crime that occurs on their campuses.

Who must comply with the law?

All post-secondary institutions, public and private, receiving federal financial assistance (for example, institutional research grants, federal work-study assistance or other grants for students and National Direct Student Loans). Virtually every post-secondary institution receives some form of federal financial assistance.

What does the act require?

Colleges and universities are required to publish and distribute each September an annual security report containing: (1) campus security policies and procedures, (2) the law enforcement authority status of security personnel, including their working relationship with state and local police agencies, (3) a description of crime prevention and drug and alcohol abuse programs available to the campus community, (4) a listing of any policies that encourage accurate and prompt reporting of crime to the appropriate police agencies, (5) campus policies regarding law enforcement relating to drug and alcohol use and (6) actual campus crime statistics.

What types of crimes must be included in the statistical report?

Statistics must be maintained for the following crimes and violations: (1) murder, (2) rape or other sex offenses (both forcible and non-forcible), (3) robbery, (4) aggravated assault, (5) burglary, (6) motor vehicle theft. Where an arrest is made, a school must also report statistics concerning: (7) liquor law violations, (8) drug abuse violations and (9) weapons possessions.

Who must report crimes?

The act requires that local police, campus security personnel and any "official of an institution who has significant responsibility for student and campus activities" (for example, deans, residence hall directors, etc.) report acts of campus crime for inclusion in the annual report.[46] A school official who "has significant counseling responsibilities" is excluded from this duty according to Department of Education regulations.[47] The school should identify specific individuals in the campus community who are required to report crimes and inform these people of their responsibilities. Additionally, an institution is required to create a campus security policy describing the process by which students and employees should report criminal offenses.[48]

Where must crime occur for it to fall under the mandatory reporting requirement?

This has been one of the more controversial issues raised by the law. Many student news media organizations and campus safety advocacy groups criticized schools for distorting the true picture of campus crime when they failed to report student-related crime, which happened to occur just off-campus, such as in fraternity housing or in a campus bar area. School administrators said that requiring such "limitless" reporting was both unfair and difficult to administer and that they were simply following the law as written.

Reporting is required for criminal incidents that occur on "campus," which includes "any building or property owned or controlled by an institution" or by a "student organization recognized by the institution." A report must also be filed when a crime occurs in any space owned by a third party, but "controlled by the institution."[49] Therefore, research facilities, athletic facilities used by a school (such as a city-owned auditorium or stadium leased for school games), fraternity and sorority houses and other off-campus student housing that may not be owned by the university but which are operated pursuant to a contract with the

FBI Definitions of Crime Categories

The following definitions are those outlined in the FBI's National Incident-Based Reporting System, which schools are supposed to use in reporting their crime statistics under the federal Campus Security Act.

- **Murder**: The willful killing of one human being by another.
- **Sex offenses, forcible**: Any sexual act directed against another person, forcibly or against that person's will. Includes forcible rape, forcible sodomy, sexual assault with an object and forcible fondling.
- **Sex offenses, non-forcible**: Unlawful, non-forcible sexual intercourse. Includes incest and statutory rape.
- **Robbery**: The taking, or attempted taking, of anything of value from one person by another, in which the offender uses force or the threat of violence.
- **Aggravated assault**: An attack by one person upon another, in which the offender uses or displays a weapon in a threatening manner or the victim suffers severe injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.
- **Burglary**: The unlawful entry into a building or other structure with the intent to commit a felony or a theft.
- **Motor-vehicle theft**: The theft of a motor vehicle, including automobiles, trucks, motorcycles and mopeds.
- **Liquor-law violations**: The violation of laws prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages. Does not include driving under the influence or drunkenness violations.
- **Drug-law violations**: The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment needed to produce or use them.
- **Weapon-law violations**: The violation of laws prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, knives, explosives, or other deadly weapons.

school or otherwise "controlled" by them, and other school-related premises (for example, a teaching hospital or a banquet hall that is regularly used for school social functions) should all arguably fall within the "campus" definition. Crime that occurs in areas that are frequented primarily by students, but which are nevertheless not in any way "controlled" by the school (such as a favorite off-campus bar or club or private student housing) probably does not have to be included in the annual report.

What period of time does an "annual report" cover?

The 1994 regulations indicate that the statistical information contained in each report should be based on a calendar year (January 1 - December 31).[50] Starting in September 1995, annual reports were required to contain statistics for the three preceding calendar years.[51]

What is the "timely report" requirement?

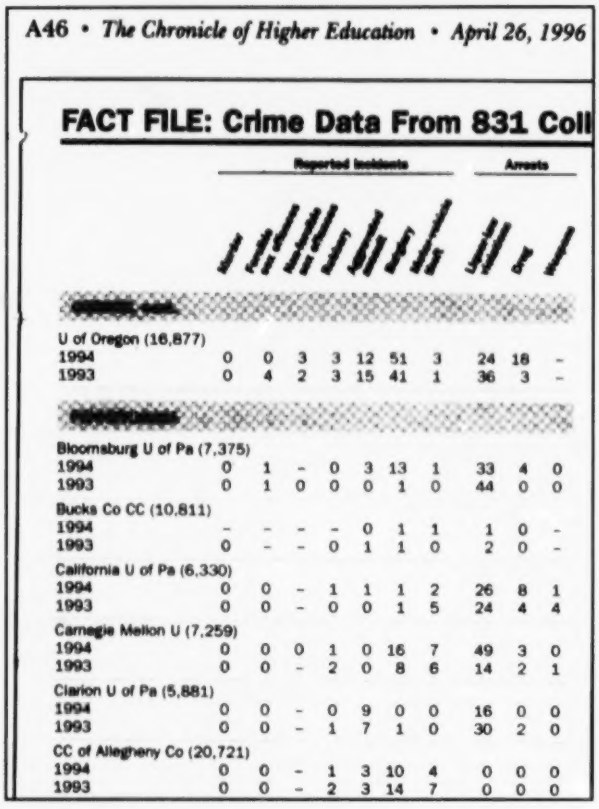
This requirement, discussed in more detail on page 14, imposes an important responsibility on schools. In addition to the annual statistical report, the Campus Security Act requires that schools make "timely reports to the campus community on crimes [from the list above] considered to be a threat to other students and employees that have been reported to the campus security office or the local police department."

How can I get a copy of my school's report?

The law requires that schools "prepare, publish and distribute" the above security report to all current students and employees. It also requires that schools provide a copy to any applicant who requests the information. The reports can either be mailed (either through regular or campus mail) or hand-delivered in the form of part of a publication that is distributed to the campus community. The actual reports compiled by schools have taken many forms, from a no-frills mailing to a full-color, tabloid-sized brochure complete with poster-size maps and safety tips. Other schools are reportedly including the required information in existing campus publications or mailings, such as student newspapers, school catalogues, student handbooks or tuition bills. If you do not receive a copy you should contact your school's campus security office and request one. Additionally, each year the Chronicle of Higher Education publishes a comprehensive listing of crime statistics gathered from the crime reports compiled by schools across the country.[52]

What are the penalties for non-compliance?

An institution that does not comply with the Campus Security Act risks losing its federal funding. Because almost all schools (public and private) rely heavily on federal funds, this is potentially a very real threat. The U.S. Department of Education is responsible for monitoring and enforcing schools' compliance.



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FACT FILE: Crime Data From 831 Coll

	Reported incidents							Arrests		
[redacted]										
U of Oregon (16,877)										
1994	0	0	3	3	12	51	3	24	18	-
1993	0	4	2	3	15	41	1	36	3	-
[redacted]										
Bloomsburg U of Pa (7,375)										
1994	0	1	-	0	3	13	1	33	4	0
1993	0	1	0	0	0	1	0	44	0	0
Bucks Co CC (10,811)										
1994	-	-	-	-	0	1	1	1	0	-
1993	0	-	-	0	1	1	0	2	0	-
California U of Pa (6,330)										
1994	0	0	-	1	1	1	2	26	8	1
1993	0	0	-	0	0	1	5	24	4	4
Carnegie Mellon U (7,259)										
1994	0	0	0	1	0	16	7	49	3	0
1993	0	0	-	2	0	8	6	14	2	1
Clarion U of Pa (5,881)										
1994	0	0	-	0	9	0	0	16	0	0
1993	0	0	-	1	7	1	0	30	2	0
CC of Allegheny Co (20,721)										
1994	0	0	-	1	3	10	4	0	0	0
1993	0	0	-	2	3	14	7	0	0	0

A small sample of the Campus Security Act statistics published annually by The Chronicle of Higher Education.

What can you do if your school is not following the required procedure or is providing inaccurate statistics?

Tell school officials that you plan to file a complaint with the Department of Education that could result in the loss of their federal funding. Then do just that. Contact the director of the Regional Office of the Department of Education that serves the state in which the school is located with the specifics and any evidence of the school's non-compliance. (A list of the names, addresses and telephone numbers of the regional directors can be found in the Appendix on page 39.) Be sure to carefully document all contact with the Department and ask that it notify you of its findings. Notify the Student Press Law Center if you have any problems with the Department of Education's response to your complaints.

Using State Campus Crime Statistics Laws

In addition to the federal Campus Security Act, some states have enacted their own laws that require schools to compile and release statistical information regarding campus crime. As of the summer of 1996, 11 states (California, Connecticut, Delaware, Florida, Louisiana,

Massachusetts, Pennsylvania, Tennessee, Virginia, Washington, and Wisconsin) had such legislation. (See the Appendix, page 36 for citations.)

The advantage to some of these laws is that they require schools to report more information (for example, more or different categories of crime must be reported, crimes from a broader geographic area must be included, more or different types of information must be included in reports) than required by the federal law.

An unusually broad state statute is Delaware's crime statistics law. Unlike the federal law, which requires a public or private university to report only certain designated crimes that occur on campus, Delaware requires the universities to report the number and type of every offense that is reported to them. A university's willful noncompliance with the statute can result in it being fined up to $10,000.

A novel trend in state crime statistics laws is exemplified by a Tennessee statute. In that state, all public or private universities must report all crimes occurring on campus that are reported to the Tennessee Bureau of Investigation (TBI). The TBI must then compile all of the statistics, divided by college, into an annual report.

In addition, the TBI must include in the report, as a separate section, all incidents where a student is the victim of an off-campus crime in the county where he goes to school. This type of information should be of special value to student journalists attempting to get a complete picture of the campus-area crime scene.

Reporters in California should note that their state requires almost all public and private colleges and universities to maintain records of, among other crimes, all hate crimes that are reported to it or for which the campus police made an arrest. In addition, the school must maintain records of all non-criminal acts of hate violence that are reported to the campus police.

When using a state statute, student journalists are advised to pay careful attention to the type of institution covered by the law. Unlike the federal law, some of the state laws are limited to public schools. For example, although Louisiana requires schools to report more types of crimes than the federal law does, the statute only applies to public colleges and universities. And some laws, like California's are limited to schools of a certain size.[11] However, most states with crime statistics laws explicitly cover both public and private schools.

Obtaining the various reports should not be difficult for student journalists. Although a few states, like Delaware and Louisiana, clearly define the crime statistics reports as public records, most do not. However, every state requires that the report be given, upon request, to any currently enrolled student, student applicant or employee. A student reporter is no exception. Furthermore, a few states require the institutions send their report to all enrolled students every year.

If the school refuses to comply with the state law, there is the possibility of suing it in court and obtaining damages. For example, in California a student reporter whose school refuses to provide the required report can be awarded up to $1,000. In other states, like Delaware, the attorney general may be authorized to sue on behalf of the state to force the college to comply with the law. Unfortunately, other states have put little "bite" in their laws. Students in these states would probably be limited to a court order compelling a school to release the information.

SPECIAL STORY IDEAS FOR USING CRIME STATISTICS

Although the law provides the means to obtain these numbers, it is ultimately your job to make sense of them for the reader. Of course, you will probably want to do a story on the numbers themselves, especially if there has been a significant increase or decrease in them over the past year or several years. But this traditional approach does not have to be the only way you can use the statistics.

For example, how about a story comparing the number of crimes at your school with the number of crimes at other schools with a comparable student population? What seems to account for the difference? Is it just that one school is in a more crime-ridden area or does one school have different methods for reducing crime or reporting statistics? These are only two of the many factors that could explain the differences in campuses and the statistics they report. Avoid making comparisons between schools based on raw statistics alone.

Another potential story is to look at what types of programs your school has initiated to help reduce crime. Look at the trend in the statistics, does the program seem to work? With this analysis in hand you are much more likely to get candid answers from your campus police about the effectiveness of their programs than if you simply asked them how their programs are doing without this information.

Finally, sometimes the accuracy of the report will be the real story. As discussed earlier, there have been a number of claims that some schools intentionally or unintentionally provide misleading figures. How are the statistics compiled at your school? What areas of the

campus community are included in the report and what areas are not? Does such reporting provide an accurate picture of campus crime at your school? Do the numbers match up with information you may have obtained from other sources, police log entries, for example? What might be done to improve the reporting process?

While school officials may only be required to issue one report per year on the dangers of campus crime, you owe your readers much more.

ACCESS TO CAMPUS COURTS

OVERVIEW

After Congress enacted the Campus Security Act in 1990 and clarified that the Buckley Amendment could not be used by schools to deny access to campus police reports in 1992, many access advocates thought that the legal battle for campus crime information had been all but won. But as the new laws went into affect and school officials realized that they were now legally obligated to provide more crime information than they had before, a new battlefront arose: the campus disciplinary process.

For some years, schools had allowed campus disciplinary bodies to determine the punishment for students accused of violating school rules. But as the number of criminal incidents on campus increased, these campus courts began considering more cases relating to criminal behavior as well as more traditional transgressions such as academic dishonesty and curfew violations. And these deliberations were typically conducted behind closed doors.

The secrecy of campus courts became a matter of concern for the campus media as the perception grew that some schools were using the disciplinary process as a means for thwarting public access to crime information. As one study of campus police and security departments concluded, the "primary method used [by schools] to keep crimes from becoming reportable was to use the campus judicial/student court system."[54] Student journalists and others began to believe that some school officials were actively discouraging students from filing police reports and instead were directing them into the campus disciplinary process where the matter would be handled without any public awareness of the criminal incident at issue.

The Red & Black student newspaper at the University of Georgia in Athens became the first media organization to sue for access to campus court information. In 1991, it went to court to get access to the proceedings and records relating to allegations of hazing against a campus fraternity. Hazing is a crime in Georgia, as it is in many other states. Eventually, the newspaper was not only awarded access to the information in that case, but also in a case involving charges of arson and gay-bashing against an individual student.[55]

In an effort to assist the campus media and promote more openness in campus judicial proceedings, the Society of Professional Journalists created its Campus Courts Task Force in 1993. The coalition of national journalism and education organizations that make up the Task Force have joined in voicing their concern that crime is being hidden on many campuses through these secret courts. In contrast, the national Association for Student Judicial Affairs and many college officials have voiced their concerns about damage that could be done to participants if proceedings are opened to the public. The result is a topic of heated debate. As this publication went to press, lawsuits had been filed by student newspapers at the University of Miami in Ohio and the University of North Carolina at Chapel Hill to gain access to campus courts proceedings or records.[56]

WHAT ARE CAMPUS COURTS?

The development of a formal campus court system began during the 1960s, according to Saunie Schuster of Ohio State University, president of the Association for Student Judicial Affairs. Before this time, Schuster said, college deans, acting in a parental capacity, would individually determine the punishments of students accused of wrongdoing. After the landmark 1961 case Dixon v. Alabama Board of Education,[57] which required public colleges and universities to afford due process rights to students before taking disciplinary action, colleges and universities began a transition from individual adjudication of conduct violations to the campus disciplinary systems used at most colleges and universities today, she said.

According to Schuster, campus disciplinary proceedings are conducted by panels of either students, students and faculty or trained hearing officers, depending on the policies of the individual institution. At least at a public school, campus court procedures must satisfy the requirements of constitutional due process. This, said Schuster, includes a clearly written code of student conduct, notice of the charges to the accused and an opportunity for the accused to be heard. There is no right to counsel or appeal in campus courts, she said.

According to Schuster, campus disciplinary proceedings are, unlike courts of law, intended to be non-adversarial in nature. There is no discovery, cross-

A ROAD MAP FOR CAMPUS CRIME REPORTERS

Was the criminal activity that you want to cover reported to on or off-campus officials?

OFF

ON

What type of information are you seeking?

- Campus police records relating to a specific crime.
- Periodic campus crime statistics
- Campus court records related to criminal activity
- Campus court proceedings related to criminal activity

Campus police records relating to a specific crime.

Is the school public or private?

PUBLIC

If your school contracts with a private company to provide security, see page 9. Otherwise, continue.

PRIVATE

Do campus police have "law enforcement authority" status? (See page 9).

YES

Information should be available pursuant to your state's open records law, which requires all "public agencies" to provide access to their records upon request, subject to specific statutory exemptions. The Family Educational Rights and Privacy Act (also called the Buckley Amendment) does not prohibit the release of the information you seek. For information on how to use your state open records law, see page 11.

NO

Do you live in a state with an open campus police log law (as of 8/96: CA, MA, PA, TN, WV, VA)?

YES

Information may be available depending on the scope of the law. (See pages 13-14).

NO

Does the crime pose a "threat" to the campus community?

IF NOT

YES

Information should be available pursuant to "Timely Reports" requirement of the Campus Security Act of 1990. (See pages 14-15).

NO

Your school may not be legally required to provide access to the information you seek. Nevertheless, there are a number of policy or other "non-legal" arguments you can and should make to persuade officials to provide the campus community with accurate and timely crime information. If they hide campus crime information, publicize that fact. Also, be sure to stay abreast of proposed changes to state or federal law that may require schools to be more open about crime.

Periodic campus crime statistics

Does your school receive federal funding (e.g. grants, work/study funding, etc.)? Almost all schools do.

YES

Your school must provide you with an annual report that includes the number and types of crimes that have occurred on campus. (See pages 15-17).

IN ADDITION

Do you live in a state with its own campus crime statistics law (as of 8/96: CA, CT, DE, FL, LA, MA, PA, TN, VA, WA, WI)? If so, additional information may be available. (See pages 17-18).

NO

Campus court records related to criminal activity

Is the school public or private?

PUBLIC

Would your school's campus court be considered a "public body" pursuant to your state's open records law? Factors to consider include the court's personnel makeup, authority and funding. (See page 23).

NO

YES

Is there a specific exemption under your state's law that allows school officials to withhold the records?

YES

NO

Is your school citing the Family Educational Rights and Privacy Act (also called the Buckley Amendment) as its excuse?

NO

Records open.

YES

Do the records you seek personally identify individual students (as opposed to simply providing generic information about age, gender, type of crime, etc.)?

NO

YES

Welcome to the Big Battle. The Buckley Amendment says that a school cannot release a student's "education records" without permission. The big question: are campus court records involving non-academic criminal offenses "education records"? Courts and the Dept. of Education have disagreed. (See pages 23-24). If you believe your campus court is clearly a "public body" under the law and that you have a good case, you should consider challenging your school's decision to deny access. You should also be sure to publicize their action.

PRIVATE

Your school may not be legally required to provide access to its campus court system. Nevertheless, there are a number of "non-legal" arguments that you can and should make to persuade officials to provide the campus community with accurate and timely information. (See page 22). Also, the law in this area is changing. An increasing number of states — and the federal government — have proposed laws that would require schools to be more open about campus crime.

Campus court proceedings related to criminal activity

Is the school public or private?

PRIVATE

PUBLIC

Can you make an argument that your school's campus court is a "public body" pursuant to your state's open meetings law? Factors to consider include the court's personnel, authority and funding.

NO

YES

Is there a specific exemption under the open meetings law or any other state law that allows school officials to close the proceedings?

YES

NO

Proceedings should be open pursuant to the state open meetings law, which requires all public bodies to provide notice and access to their meetings. Note: The Buckley Amendment is not a valid excuse. (See page 24).

BEST COPY AVAILABLE

examination of witnesses or subpoena power. Moreover, most campus courts apply a lower standard of proof than the "beyond a reasonable doubt" standard used in criminal case in a court of law.

While campus courts do hear cases involving conduct that could be considered "criminal," they operate as distinct and separate entities from courts of law. Proceedings in the campus courts and the courts of law can take place concurrently.

Schuster said that campus courts will most often sentence students to probation, which involves notice to the student that future misconduct will result in further punishment and may include certain conditions. For example, she said, a student on probation may only be permitted to be present on campus for classes. The most stringent punishment conferred by campus disciplinary proceedings is expulsion.

THE CURRENT CONTROVERSY

Campus Judicial Affairs Officers' Point of View

College judicial affairs officials present several arguments why they believe campus judiciary proceedings must remain closed to the public.[18] The goal of campus disciplinary proceedings, they say, is to educate students who have violated college codes of conduct about the inappropriateness of their behavior, not simply to punish. They believe that students can better learn to correct their behavior in an environment free from public scrutiny. Moreover, as educational institutions, campus courts do not substitute for, but rather act concurrently with, proceedings in courts of law. These legal proceedings provide the public with sufficient information on campus crime. Further, campus disciplinary proceedings are non-adversarial with no rights of discovery, cross-examination or subpoena. Because campus judicial officials must rely on the voluntary participation of witnesses who may be unwilling to come forward or provide candid testimony if the proceedings are public, campus courts must remain closed. Finally, supporters of closed campus courts say, students who wish to maintain their anonymity or who may have insufficient evidence to proceed in a criminal court depend on closed campus disciplinary proceedings as their only recourse when they have been victims of campus crime.

The Media's Perspective

On the other hand, the news media, as representatives of the public, offer several reasons why the proceedings of campus disciplinary courts that involve criminal behavior should be open.[19] Most importantly, they say, open proceedings will foster greater awareness of crime among the campus community and thus safer college campuses. If students are aware that crimes are occurring on their campus, they will take precautions to avoid becoming victims of crime. Further, critics of the present system say, the accuser and the accused cannot be assured the fair and equal treatment that result from public scrutiny if a trial is held behind closed doors. In addition, open courts facilitate student trust of campus judiciary systems and their officials. Students who understand campus courts and how they function are more likely to have confidence in their results than those who are excluded from the process. Unfortunately, these critics say, in many of the instances where the public has gotten a peek behind the doors of a campus court, the picture presented has encouraged anything but trust. Charges of favoritism for student athletes or other "select" defendants, inept administrators and the cover-up of serious criminal activity abound. True or not, they say, the climate of secrecy that surrounds campus courts certainly helps fan further rumors and undermine the public trust. Finally, they say, it seems illogical and inequitable that the criminal actions and subsequent discipline of a student who commits a crime on campus will remain secret when that same information would be public if the crime were committed even a few yards off college property. Despite the claim of campus court officials, critics say that there are many examples of cases involving non-academic criminal conduct being heard only in a campus court and never being referred to outside law enforcement officials. Nowhere else in America, proponents of more open campus courts say, does such a "Star Chamber" system of justice remain in existence — and for good reason.

OBTAINING CAMPUS COURT INFORMATION

Student journalists seeking access to campus court records and proceedings may have to leap through two separate hurdles. First, the journalist must have some means of obtaining access to the records or proceedings. This hurdle can be overcome by persuasion, or, if that fails, state law. Second, even if state law seemingly requires disclosure of campus court records or admission to proceedings, school officials may still attempt to use federal law, specifically the Buckley Amendment, as an excuse for blocking public access.

Using Persuasion

Before asserting your legal "right" to attend campus court hearings and obtain related records, it is always better to try to persuade the court officers or records

custodian that keeping the public informed about campus judicial proceedings far outweighs any perceived benefits from secrecy. Be sure to emphasize that two principle functions of campus courts, to punish fairly and to deter others from violating the code of conduct in the future, are both well-served by making the hearing open to the public.

Using State Law

If you are unable to obtain access by persuasion, you will have to rely on your state's open meetings and open records law. Ideally, you should know the law before you try to gain access so you can refer the campus court officers to the relevant sections. Look at the language of the statute to see what types of public bodies it covers and be prepared to argue why the campus court fits one of them. For example, the Supreme Court of Georgia held that because the University of Georgia Board of Regents was a "public agency" under the state open meetings and open records laws, and because it delegated its power to discipline students to the campus court, the court itself was a public agency that must comply with the state's freedom of information laws.[60]

Since Georgia is the only state where an appellate court has decided the question of whether a campus disciplinary board is a public body, those students outside of Georgia will have to argue to campus officials that campus courts should be considered a "public agency" under their state open records law. Obviously, the argument must be tailored to the exact language of the applicable statute. Trial courts in Louisiana and Oklahoma have refused to open campus court records, but neither case resulted in a published court opinion.[61]

While every statute defines "public agency" somewhat differently, two general statements can be made. First, and most importantly, no court has ever held that a campus court at a public school does not fall under the definition of a public body in the state open records law. Second, many state statutes are written broadly enough so as to enable you to argue that a campus court at a public school should be considered a public agency. With that in mind, it should be noted that some laws are more susceptible to such interpretation than others.

For example, some statutes define "public agencies" to include any board of a state institution that is supported by public funds.[62] Under this definition, the student can argue that a campus court is a public agency because it receives its funding from the school, which in turn receives its funds from the state. Other statutes explicitly include in the definition of "public agency" any *committee* of an institution of higher education or university board of regents.[63] A committee should, at the very least, include those associations empowered to perform a function for another. Since the campus court is created precisely to exercise a function delegated by the state to the university (discipline for violating the law or campus rules), it is in effect a committee of the board of regents.

A few states have statutes that define "public agency" so broadly so as to seemingly cover every government entity not specifically excluded by the statute. For example, New Jersey's open meetings law defines a public agency to include "any other group of two or more persons organized under the laws of this State, and collectively empowered as a voting body to perform a public governmental function affecting the rights, duties, obligations, privileges, benefits, or other legal relations of any person ...."[64] Somewhere in that definition probably lies a campus disciplinary hearing.

THE BUCKLEY AMENDMENT HURDLE

Once you are able to show a right of access to campus court records, there may be a further hurdle you must overcome. Under the federal Family Educational Rights and Privacy Act (FERPA),[65] otherwise known as the Buckley Amendment, a school can lose all of its federal funding if it has a "policy or practice of permitting the release of [students'] educational records ... without the written consent" of the student involved.[66] Though simple on its face, the Buckley Amendment has been the source of much controversy and legal dispute, most of it centering on what exactly is meant by an "education record." (See also the discussion on page 12.)

The statute, which has been amended several times, defines "education record" as any record that (1) contains information directly related to a student and (2) is maintained by an educational agency or institution.[67] Among other things, the statute specifically excludes from this definition law enforcement records held by the campus police.[68] Access proponents argue that the records of campus courts that hear cases involving allegations of criminal behavior should be considered "law enforcement unit records" and thus exempt from Buckley's limitations. Unfortunately, the statute does not clarify the matter.

At least one court has specifically held that campus court disciplinary records, unless they deal with academic offenses such as plagiarism, are not "education records" under the law.[69] In that case, a student reporter attempted to obtain records of a campus court disciplinary proceeding involving a fraternity at the University of Georgia. The university refused to release them, claiming they were "education records" under Buckley.[70] The

Georgia Supreme Court disagreed. The court stated that "education records" include only those records relating to individual student academic performance, financial aid, or scholastic performance.[71] In contrast, records related to violations of the law are excluded because they are more like law enforcement records.[72]

However, a Louisiana trial court, facing the same question, concluded that campus disciplinary records were education records.[73] The court was careful to note the difference between the case it decided, which involved a disciplinary hearing at Louisiana State University at Shreveport, and the Georgia case. The court noted that the University of Georgia's campus court was analogous to a court of law, with many of the rights and procedures common to all American courts. The Georgia campus court was expressly empowered to invoke sanctions against students. The trial court found that the LSU-S hearing, however, was simply a meeting between a student affairs committee and the student. There were no formal procedures and no adverse action could be taken without an audit by a different committee.[74]

After these conflicting decisions, the U.S. Department of Education released its regulations interpreting the Buckley Amendment and its recent "law enforcement unit records" exemption.[75] Although it recognized "the problem of crime on campus," it said that it was "legally constrained to conclude that records of an institution's disciplinary action or proceeding are 'education records' under FERPA, not law enforcement unit records."[76]

Despite this opinion, journalists should be aware that courts are not legally required to follow the Department's interpretation of the Buckley Amendment, and these regulations should not be read as the end of the ongoing effort to open the door to campus courts. Furthermore, the Buckley Amendment does not necessarily override any obligations for disclosure created by a state freedom of information law.[77]

It is also important to remember that the Buckley Amendment expressly applies only to information that is "directly related" to a student.[78] It does not apply to records that contain only general "non-identifying" information, such as the age and sex of the assailant, the offense, and the general location of the conduct. Nor does it apply to any information relating to college faculty, staff or other non-students.

Even assuming that Buckley did limit release of disciplinary records, a strong argument can be made that under a state open records law, a public college or university has an affirmative obligation to remove personally identifiable information from the record (by blacking it out) and turn over the remaining information upon request.[79]

The Future of Buckley

In early 1995, the Secretary of Education encouraged Congress to work with him "to help resolve [the] disputes" over the definition of education records. He said that it should be left up to "the legislative forum" to balance the public's interest in the safety of our college campuses with the right to privacy of students.[80]

In response to the Secretary's letter, there has been discussion in Congress of legislation that would specifically exclude from the definition of "education records" all individual records held by a college dealing with the possible violation of any criminal law. The Student Press Law Center *Report* is a good resource for keeping track of any developments on this front.

Campus Court *Proceedings*: Buckley No Excuse

The statement was the shot heard around the student press world: "FERPA does not prevent an institution from opening disciplinary proceedings to the public."[81]

In what may prove to be a shock to colleges and universities and a welcome boost to the students that cover them, the Department of Education, which is the only administrative agency with authority to enforce the Buckley Amendment against schools, has formally declared that the law cannot be used to prevent public access to campus disciplinary *hearings*, even if the *records* of such hearings are off-limits. Some schools will suggest that if education records are discussed in a disciplinary proceeding, then Buckley requires the closure of the proceeding to avoid the release of the records. However, if that were true, any school that allowed any students to attend disciplinary proceedings, whether as witness or judge, would be violating the law by their presence.

In practice what the Department of Education's statement means for student journalists is that, if your state open meetings law covers campus disciplinary hearings, you cannot be excluded from them because of the Buckley Amendment. (See the Appendix for the citation to your state's law.) Administrators and student officers who refuse to allow the public admittance to such meetings may now be violating state law and may, depending on the statute involved, be liable for fines and attorney fees.

HOW TO BETTER COVER CAMPUS COURTS

As the debate over access to campus disciplinary proceedings has grown, campus judicial affairs administrators have complained that some members of

the media have suggested every campus court has as its mission the cover-up of corruption, the protection of the guilty and the abuse of innocent victims. They have voiced concern that the strong ethical principles and the commitment to students most members of their profession espouse have been lost in the uproar.

In the mind of any good journalist, secrecy breeds suspicion. But most would admit that the campus media has neglected its responsibility to cover the campus disciplinary system and the officials who run it in a meaningful way. Looking at this little-understood part of campus life as more than just a source of scandal can result in excellent journalism that provides the community with information it can use.

A growing number of student newspapers are creating a campus courts beat and are attempting to establish a cooperative working relationship with their judicial affairs officials. Reporters are asking about the judicial affairs philosophy of their campus, the procedural details of campus disciplinary proceedings and the written code of student conduct the violation of which can result in punishment. The Association for Student Judicial Affairs (see Appendix for contact information) is a good source for background information on the topic. As with campus police and security departments, student journalists who have worked to develop a good rapport with judicial affairs officers will more readily be granted access to information when an incident occurs than those who are strangers.

REPORTING ON CAMPUS CRIME AND CAMPUS COURTS: A "HOW TO" GUIDE FROM A VETERAN ADVISER

by Gordon "Mac" McKerral

The ideas suggested below should serve as a starting point for your work. Once you are into it, let your journalistic good sense be your guide. I offer only two cautions: First, this outline is for a reporting project geared toward educating readers at your school about how campus crime reports and the campus courts system works, and the public access issue. Leave opinion writing until after you report thoroughly, accurately and fairly. Make sure all sides of all issues are represented. Let readers and editorial writers draw their own conclusions. Second, when handling sensitive areas and/or charges leveled between parties, get documentation, verify and corroborate with more than one source. And always try to get sources to speak on the record.

And remember: Keeping organized and systemic reports of crime on your campus is the only way you can accurately identify discrepancies between annual crime reports released by your college or university and reports you acquire throughout the year. Document efforts to get crime reports when they are refused. Be consistent in efforts to acquire information.

The First Step: Educate Yourself

Before you even think about interviewing, find out as much as you can about the topics you will write about. A good place to start is with the university documents that address campus crime and courts/hearings/records of any kind. Some examples: faculty handbooks, university catalogs/bulletins, faculty adviser handbooks, student handbooks and mission statements. When you reference these and other policy documents in your stories, cite them and quote them directly.

Next, get a copy of your state's open meetings/open records statute and read it so you can identify how it treats university business. If you can't figure it out, contact you state Attorney General's Office, the state press association, the Student Press Law Center or the SPJ Freedom of Information Chair. See if someone can't give you some help.

Now, look for articles written on the issue. Get into the library on a computer and/or periodical guide and look for stories written about campus crime, campus judicial hearings, campus courts, crime statistics and reporting them to the Department of Education, the Buckley Amendment, the Higher Education Act, the Student Right to Know Act, etc. These are valuable for two reasons: They will help you identify issues and develop good questions for sources, and they will provide you the names of sources for more information.

If you have access to the Internet, on-line legal information services or similar bulletin boards/lists, get on one and get out the word that you are looking for information and/or good sources for your stories. Be careful here, and always verify sources that cooperate via computer transmission. Also, ask a journalist well-versed in ethics and emerging technologies how you attribute/use computer derived information.

How Many Stories? Who Should I Interview?

Once you have a handle on the issue, outline your series. Build around a main story. Keep story lengths manageable, hence readable and easier to organize. Issues include but are not necessarily limited to how your school's system works, what authority the system has, who serves on hearing boards/courts, etc. What about academic privacy? How do students feel about serving on

and/or being subject to campus court decisions? How do faculty members feel about serving on these courts? What about parents? Do they know how the system works? Victims' rights groups come into play, particularly when more serious crimes such as assault, sexual assault and battery are involved. How and what does the university report on crime?

What about civil law enforcement and prosecutors? How do they feel about crimes being handled/judged by students and/or campus personnel? This list is just a starter. Your school, its policies and recent action by campus courts at your college or university will help clearly define stories. And the stories you choose to write will help to determine ...

The Sources You Need

Most of these will be clear, but just as a guideline remember what a variety of sources provides: perspective and balance. I try to get my students to identify sources (as related to perspective) this way: local (at your school, from your readership area), state, regional and national. In some cases, a source from each of these categories may be needed to help paint the big picture.

For example, a local attorney or governmental attorney, a spokesperson for the state bar association or the state attorney's office and a national legal organization representative. That same genealogy would apply to a campus student affairs officer and/or a regional or state student affairs officer organization. It would also apply to campus police and state and national law enforcement organizations.

Other source selections will be dictated by your effort to balance viewpoints and opposing views. There are many sides to the story of public access and crime. Represent them all fairly.

Always conclude an interview with "thanks," and "I may need to get back with you," and "Do you know anyone else that I might need to talk to about this?" And a look at what is happening at other schools in your state or region is appropriate for developing perspective.

Resources

Anyone on the Campus Courts Task Force or Security on Campus can help. But remember, the Task Force and its allies have a mission and a viewpoint. You need to look at all angles. The group most interested in maintaining closure of the campus court system is the Association for Students Judicial Affairs (ASJA), but there are others. And the ASJA does not seem to have a problem with the open and accurate reporting of campus crime by universities and colleges.

And Finally

Think graphics. This project needs infographics/photos/art/illustrations. Put a team together and do it right. Now...go to it.

McKerral is the chair of the Society of Professional Journalists Campus Courts Task Force, a coalition of 14 professional press and academic organizations formed to challenge restrictions on access to campus judicial proceedings and Vice President of Campus Chapter Affairs for the national Society of Professional Journalists. He is also a journalism professor and adviser to the student newspaper, the Tropolitan, at Troy State University in Troy, Ala. He can be reached at (334)-670-3328.

TURNING UP THE HEAT

One of the most effective means of persuading school officials to make more crime information accessible is to help them realize that the consequences of cover up are far worse than those of openness. In the 1990s, every campus journalist needs to understand the politics of access.

PUBLIC PRESSURE

Make the issue of access to campus crime information a regular news item in your publication. Editorialize about why your school's policy denying access to police logs or disciplinary records needs to be reconsidered. For example, does your community know that a panel of student or faculty judges are hearing cases that may include sexual assault or theft behind closed doors?

Many newspapers are hesitant to make themselves a focus of the news, but you have to remember that it is your readers who are ultimately being denied information and they who will suffer because of it. Get them involved in the battle.

Enlist the support of the student government or other sympathetic campus groups including the faculty senate and women's and minority student organizations whose members may have been the victims of crime on campus.

Contact the local news media and professional press organizations such as the Society of Professional Journalists to make them aware of your situation and enlist their support. Find out if they have had similar problems getting information from campus officials. They might be interested in the records you seek and be willing to join in your effort. Given the timeliness of the

issue of campus crime, they might also run stories about your efforts.

Contact local, state or national legislators who might vote on funding for your school and tell them your plight. Frequently politicians rely on student campaign workers and look for student votes. They might be able to apply some effective pressure on school administrators. Many of these political leaders will have children in college and may react with the concern of parents to the situations you describe.

Urge students who are victims of crime on campus to make it known. Ask them to report any incidents to the local police (and not to presume that campus security will do that for them) and to come forward to your newspaper to relate their stories. Explain that the campus community should know where and how crimes are being committed so that they can take steps to protect themselves. Run a house ad in each issue that includes the city police's phone number and your office number and tells readers to call when they are victims of crime.

Finally, contact the Student Press Law Center if you need answers to questions about the law and to keep us posted about your situation. The more information the SPLC has about the extent of the problem student publications are having in gaining access to campus crime information, the better able we will be to help you fight to get it.

SCHOOL LIABILITY FOR FAILURE TO WARN

In what may prove the most convincing argument yet, schools that refuse to provide access to accurate and timely campus crime information may soon find themselves feeling it in one place it really seems to hurt — the pocketbook. Student journalists attempting to persuade campus police authorities to disclose information regarding campus crimes can bolster their efforts by informing school officials of their potential legal liability should they refuse. Courts nationwide have held schools civilly liable for crimes committed against their students when the school has failed to warn the student body of the dangers of crimes committed on campus. The California case of *Peterson v. San Francisco Community College District*[82] is illustrative.

In *Peterson* a female student was assaulted on a stairway in the college's parking lot by a man hiding in foliage. The college knew of previous similar incidents in the same area.[83] In holding that the college had a duty to exercise reasonable care to protect its students,[84] the court emphasized that a college "is not immune for failure to warn its students of known dangers posed by criminals on campus."[85] In making this determination, the court relied on several criteria, chiefly foreseeability and control.[86] The previous similar attacks served to notify school officials that "any woman who might use the stairs or the parking lot would be a potential target."[87] The attack was therefore foreseeable. Further, since the incident occurred on campus, the college clearly controlled the premises where the student was assaulted.

As in the *Peterson* case, courts in other states have relied on foreseeability and control as the determinative factors in holding schools liable for criminal activities on their campuses.[88] In a more recent case, for example, the Kansas Supreme Court ruled that Kansas State University had "a legal duty to use reasonable care" to protect a student from criminal conduct that might occur in a dormitory common area.[89] That duty, the court ruled, included the duty to warn students of foreseeable dangers. In this case, a female student was sexually assaulted in her dorm by another resident, who, it turned out, was a KSU football player who had been accused of raping another student three weeks earlier.

Clearly, schools that know about campus crimes and hide them from their students must be prepared to suffer potential legal liability for their actions. The threat of this risk serves as a powerful weapon in the student media's battle to protect their student readers.

GOING TO COURT

Filing a lawsuit to get the campus crime information you want will always be a last resort. It is a slow and sometimes expensive process to get a court ruling. But if the law suggests you have a legal right of access to the information you are looking for and none of your other efforts to secure that right have succeeded, taking your school to court may be the only alternative. The Student Press Law Center can provide assistance in finding a lawyer to represent you for little or no charge when you get to that point.

Some student journalists have sought out other local news media to join their lawsuit. This can add weight and credibility to a claim and can increase the resources available.

As an alternative to private litigation, some attorneys have also suggested asking the local district attorney to prosecute the campus security or college administration for obstruction of justice if there is evidence they have not been passing on information about serious crime to the local police or prosecutor. Apparently no school has ever been prosecuted on this basis, but a serious cover-up might prompt a local prosecutor to act.

AVOIDING COMMON LEGAL PITFALLS IN CAMPUS CRIME REPORTING

While establishing a strong campus crime beat may be the most important job carried out by a student media organization, it can also be among the most problem-filled, particularly in the areas of libel and invasion of privacy. Unlike a sports story, where reporting a score incorrectly might agitate a few readers, falsely reporting that an individual has been arrested for a crime can pose serious legal problems. While a detailed discussion of these topics is beyond the scope of this publication, the following should alert you to some of the potential trouble spots.

LIBEL

Libel is the publication (or broadcast) of a false statement of fact that harms an individual's reputation. Obviously, reporting that someone has been accused of or is any way involved in criminal activity will almost always damage a person's reputation and — if the report is false — is one of the surest ways to end up as a defendant in a libel lawsuit.

Towards that end, newsrooms should adopt strict editorial policies regarding crime reporting that are designed to catch problems before publication or broadcast. Truth is an absolute defense to a libel charge. Thus reporters should be appropriately cautioned about the need to take scrupulous notes, obtain copies of all documents and consult all relevant sources. Editors should be made aware of the special need to verify reported facts and to watch for imprecise or misleading copy, headlines or photograph captions. Legal terminology can sometimes be confusing. Such terms should not be used or changed, however, until their meaning is understood. Legal reference materials, such as *Black's Law Dictionary*, available in most libraries, or a discussion with a practicing attorney or law professor may prove helpful. The crime beat is probably not the place for a brand new reporter to get a feel for the job. There is little room for error. You must get the story right.

Whenever possible, cite to a public record (a police log, filed court records, etc.) as the source for your information. Many states recognize a "public records privilege," which will insulate a media organization from liability as long as the information was fairly characterized and accurately reported from certain records, even if it later turns out that facts contained in the public record were false. For example, if a police arrest sheet says that "John Doe, 22, of 1212 Main Street," was arrested last night for "assault" and you accurately report that information in your newspaper and attribute it to the police record, many states will protect you from liability even if it later turns out that John Smith — and not John Doe — was the person arrested. However, even if this privilege is recognized in your state, it may not apply to all public records. Thus do not ignore your responsibility to independently verify relevant facts that could damage the reputation of those you are writing about.

INVASION OF PRIVACY

Invasion of privacy is related to libel law, with some important differences. Invasion of privacy law is generally concerned with a person's right to be left alone. The most common types of invasion of privacy problems of which campus crime reporters should be aware include:

Publishing information that may be considered "private." Publishing the very intimate, private and embarrassing details of a person's life without their consent can subject one to an invasion of privacy lawsuit. Unlike a libel claim, the fact that a statement is true is no defense. Examples might include publishing information about a person's medical condition, their sex life or their financial status. Information about a person that is already known outside a person's small circle of friends or family or information that could easily and lawfully be discovered will generally not support this type of privacy claim. Most importantly for crime reporters, material that can be lawfully obtained from public records will rarely be considered private.[30] Generally speaking, if something would be considered "newsworthy," it will not be considered "private." In almost all cases, when the police arrest or criminally charge someone with a crime, or someone accuses another of criminal behavior, that information will be considered newsworthy, no matter how embarrassing it might be.

Intruding on an individual's "private space." The news media has no special license to intrude in someone's private space without consent. The press has no special right to trespass, to plant electronic "bugs" or secret cameras or to fraudulently misrepresent who they are to gain access to a private place to which they would otherwise not have access. The press also has no special right to enter a closed crime scene without the consent of authorities, although any restrictions on access must be reasonable. On the other hand, the press cannot be denied access to public space. And any information you

gather while in a public area is generally fair game for publication.

Publishing names. One question that frequently arises in the context of invasion of privacy is that of the publication of names in stories about criminal incidents on campus. Once you are sure your information is accurate, the decision to publish a person's name (the accused's, the victim's, a witness, etc.), even if that person is a minor, is yours. While many news organizations do not publish some names as a matter of editorial policy, the First Amendment protects your right to do so in this context. Because the decision to publish (or not publish) some names, such as sexual assault victims, is extremely controversial, it is worth anticipating the issues and developing a written policy prior to having to make an sudden decision on the matter.

For a more thorough discussion, see the Student Press Law Center's book, *Law of the Student Press*, Second Edition.

CONCLUSION

If you are interested in seeing police logs from your campus security department, accurate statistics about criminal incidents occurring on campus or disciplinary records that describe the outcome of accusations of criminal behavior, you are not alone. Campus journalists from Maine to California have the same interest and are beginning to increase their effort to get this information out in the open. Some courageous student editors and reporters have opened the doors to much information about campus crime. But there is much work still to be done.

Jennifer Markiewicz, the former editor of the student newspaper at Miami University in Ohio knows the price we pay for allowing crime to go un- or under-reported.

"Potential students evaluating the safety of a campus are cheated," she said. "They are instilled with a false sense of security."

The illusion of security can have disastrous results. We hope this book helps you help your campus community avoid paying that price.

FOOTNOTES

1 U.S. Dept. of Justice, *Criminal Victimization 1994* (NCJ-158022) (1996).

2 See, e.g., Nichols, "Violence on Campus: The Intruded Sanctuary," *FBI Law Enforcement Bulletin* (June 1995), at 2.

3 Smith & Fossey, *Crime on Campus* 15 (American Council on Education, Oryx Press, 1995)

4 "Violent Crime Declining on Campuses, FBI Says," *Campus Crime* (Business Publishers, Inc., Silver Spring, MD), January 1996, at 5.

5 *Id.*

6 Whitman, *Survey of College and University Law Enforcement Personnel to Determine Compliance with Campus Crime Disclosure Laws*, (Campus Safety and Security Institute 1992) [hereinafter Whitman]. The CSSI is a non-profit organization that studies crime on campus. The group conducted a survey of 336 four-year colleges and universities to measure compliance with the Student Right-to-Know and Campus Security Act of 1990. Not surprisingly, private schools were more likely to be inaccurate than public schools. Of 164 public colleges surveyed, 14 percent reported inaccurate statistics. In contrast, of 172 private schools surveyed, 49 percent reported inaccurate statistics.

7 Dickson, Holmes & Minden, *Buckley Amendment, Censorship Still Problems for College Newspapers* (College Media Review Spring/Summer 1996). Additionally, over one-fifth of the surveyed editors said they thought the statistics were "not very accurate or were inaccurate."

8 *Id.*

9 Whitman, supra note 6, at 5.

10 *Id.*

11 Some schools even go a step further. At the Universities of Delaware and Virginia, for example, the daily campus police blotter is distributed over a campus online network. See "Computer Crime Log Aids Virginia Staff, Students," *Campus Crime* (Business Publishers, Inc., Silver Spring, MD), October 1993, at 95. At the University of Minnesota, the campus police department distributes "crime alerts" to students and staff via fax machine, sometimes within minutes of a crime's occurrence. "Minnesota Fax Service Assures Fast Notification About Crime,"*Campus Crime* (Business Publishers, Inc., Silver Spring, MD)(July 1996), at 56.

12 *Campus Communications v. Criser*, 13 Med. L. Rptr. 1398 (Fla. Cir. Ct. 1986).

13 *Bauer v. Kincaid*, 759 F. Supp. 575 (W.D. Mo. 1991).

14 *Jones v. Southern Arkansas University*, No. CIV-90-88 (Columbia County Cir. Ct., May 10, 1991).

15 An unusual 1996 ruling by the Pennsylvania Supreme Court holding that the incident reports of a community college security department are not covered by that state's open records law indicates that this can still be a matter of contention. *Community College of Philadelphia v. Brown*, 674 A.2d 670 (Pa. 1996). This ruling is the only one of its kind anywhere in the country.

16 Pennsylvania and Delaware are the only states that have said public college or university records are not covered by their open records law. In Pennsylvania, the state supreme court has ruled that the records of a community college were not covered by the open records law. *Community College of Philadelphia v. Brown*, 674 A.2d 670 (Pa. 1996). Legislation has been proposed that could that change that interpretation. Pa. H.B. 277, 1995 Session. Also, Pennsylvania has an open campus police logs law that does provide for public access to some campus crime records. In Delaware, the state law explicitly exempts most criminal records, Del. Code Ann. title 29, section 10002(d)(4), and all records of the University of Delaware and Delaware State College except for documents "relating to the expenditure of public funds." Del. Code Ann. title 29, section 10002(g). However, Delaware has perhaps the most comprehensive state campus crime statistics law in the country. These two states appear unique in their treatment of public colleges and universities.

17 Alaska Stat. section 09.25.220(3) ("Public records" include those "developed or received . . . by a private contractor for a public agency.")

18 Haw. Rev. Stat. section 92F-3 (Public records include those belonging to any unit of government which is "owned, operated, or managed by or on behalf of this State or any county...") Note that Hawaii's Attorney General has specifically ruled that the daily activity reports maintained by the University of Hilo's Auxiliary Services (in this case, a private company called Freeman Guards, Inc., under contract with UHH to provide security guard services on the UHH campus) are "government records," subject to public inspection. OIP Op. Ltr. No. 94-3 (March 23, 1994).

19 Iowa Code section 22.2 ("A government body shall not prevent the examination or copying of a public record by contracting with a nongovernment body to perform any of its duties or functions.")

20 Wis. Stat. Ann. section 19.36 (3) (Public records include "any record produced or collected under a contract entered into by a [public] authority.")

21 Tenn. Code Ann. section 49-7-2206.

22 Ariz. Rev. Stat. Ann. section 39-121.01(A)(2) ("Public body" includes any organization "supported in whole or in part by funds from the state...or expending funds provided by the state.")

23 Mich. Stat. Ann. section 4.1801(2) ("Public body" includes "any . . . body which is primarily funded by or through state or local authority.")

24 Va. Code Ann. section 2.1-341 ("Public body" includes any organization "supported wholly or principally by public funds...or expending public funds.")

25 Ark. Stat. Ann. section 25-19-103 ("Public records" include "record[s] of the performance . . . of official functions which are or should be carried out by a public official or employee, a governmental agency or any other agency wholly or partially supported by public funds.)

26 Fla. Stat. Ann. section 119.011(2) ("Agency" includes any "business entity acting on behalf of any public agency."); *Schwartzman v. Merritt Island Volunteer Fire Department*, 352 So.2d 1230 (1977) (Records of volunteer fire department were public records because department acted on behalf of public agency).

27 N.Y. Pub. Off. Law section 86 ("Agency" includes any "governmental entity performing a governmental or proprietary function for the state."); *Westchester Rockland Newspapers v. Kimball*, 408 N.E.2d 904 (1980) (Records of village volunteer fire department are public records because department performs essential public service.)

28 Okla. Stat. Ann. Tit. 74, Section 360.17(D).

29 Campus Security Act of 1990, 20 U.S.C. section 1092(f)(1)(C)(i).

30 Campus Security Act of 1990, 20 U.S.C. section 1092(f).

31 20 U.S.C. section 1232g.

32 20 U.S.C. section 1232g(a)(4)(B)(ii).

33 Family Educational Rights and Privacy Act, Final Rule, 34 C.F.R. section 99.8(a)(1) (1995).

34 According to Helga Martin, senior legal analyst, California Community College's Chancellor's Office, as of July 1996 no community colleges had received such funding.

35 As of August 1996, the bill provided:
Each institution participating in any program under this title which maintains either a police or security department of any kind shall make, keep, and maintain a daily log, written in a form that can be easily understood, recording in chronological order all crimes against persons or property, reported to its police or security department, the date, time, and location of such crimes, and, if an arrest has been made, the names and addresses of all persons arrested and charges against such persons arrested. The provision of this paragraph shall not be construed to require an institution to identify in its log, unless otherwise provided by law, the names of the persons reporting the crime, the victim or victims, any witnesses or suspects who have not

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been arrested, or other information relating to any investigation of the crime. All entries in such daily logs shall, unless otherwise provided by State or Federal law, be open to public inspection.
H.R. 2416, 104th Cong., 1st Sess. (1995).

36 20 U.S.C. section 1092(f).

37 20 U.S.C. section 1092(f)(3).

38 See U.S. Dept. of Education "Dear Colleague" letter, GEN-96-11 (May 1996), at 3 (reprinted in the Appendix).

39 59 Fed. Reg. 22314, 22316 (April 29, 1994)(to be codified at 34 CFR section 668).

40 20 U.S.C. section 1092(f).

41 See 104 Stat. 2384, section 202, finding that while "crime, particularly violent crime, on some college campuses has steadily risen in recent years...out of 8,000 postsecondary institutions participating in Federal student aid programs, only 352 colleges and universities voluntarily provide crime statistics...[while] other institutions report data indirectly, through local police agencies or States, in a manner that does not permit campus statistics to be separated."

42 59 Fed. Reg. 22,314 (April 29, 1994)(to be codified at 34 C.F.R. section 668).

43 60 Fed. Reg. 34,427 (June 30, 1995)(to be codified at 34 C.F.R. section 668).

44 See, e.g., Burd, "Bill Would Toughen Crime-Reporting Requirements," *The Chronicle of Higher Education* (July 5, 1996), at A25. See also, Holland, "There's No Verdict Yet On Campus Crime," *The New York Times* (Education Life)(January 7, 1996), where David Longenecker, assistant secretary of higher education at the Department of Education, admitted that enforcement of the Campus Security Act was not a priority for his office, saying that "We aren't going to essentially establish a major monitoring effort in this area."

45 H.R. Res. 470, 104th Cong., 2d Sess. (1996).

46 59 Fed. Reg. 22,320.

47 *Id.*

48 20 U.S.C. section 1092(f)(1)(A).

49 59 Fed. Reg. 22,320.

50 *Id.* at 22,319 - 22,320.

51 *Id.*

52 *See, e.g., Chronicle of Higher Education* (April 26, 1996, February 3, 1995, February 2, 1994, January 20, 1993).

53 In California, for example, schools with a population of less than 1,000 students are exempt from the state reporting law.

54 Whitman, supra note 6, at 3.

55 *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 263 (Ga. 1993), and *Doe v. Red & Black Publishing Co.*, No. SU-93-CV-0847-S (May 6, 1993 Ga. Superior Ct. of Athens-Clark County), *aff'd*, 437 S.E.2d 274 (Ga. 1993).

56 "Editors go to court," Student Press Law Center *Report* (Fall 1996), at 27. "Case filed by North Carolina paper for access to campus disciplinary hearings," Student Press Law Center *Report* (Fall 1996), at 24.

57 294 F.2d 150 (5th Cir. 1961), *cert. denied*, 368 U.S. 930 (1961).

58 See Gregory, "Misguided Campaigns for the Release of Students' Disciplinary Records," *Chronicle of Higher Education* (April 27, 1994). Dennis Gregory was the 1993-1994 president of the Association for Student Judicial Affairs.

59 See Carlson, "Some Often Asked Questions on Secret Campus Courts," *Access to Campus Courts: A Guide for Student Newspapers* handout for SPJ National Convention (September 1994). Carolyn Carlson is a member and former chair of the Society of Professional Journalist's Campus Courts Task Force.

60 *Red & Black Publishing Co. v. Board of Regents*, 427 S.E.2d 257, 263 (Ga. 1993), and *Doe v. Red & Black Publishing Co.*, No. SU-93-CV-0847-S (May 6, 1993 Ga. Superior Ct. of Athens-Clark County), *aff'd*, 437 S.E.2d 274 (Ga. 1993).

61 *Shreveport Professional Chapter of Society of Professional Journalists v. Louisiana State University*, No. 393,332 (First Judicial District, Caddo Parish, LA. March 4, 1994); *Selkirk v. University of Oklahoma*, No. CJ 94-1514 BH (Dist. Ct. Cleveland County Nov. 7, 1994).

62 See, e.g., Ark. Code Ann. section 25-19-106(a); Kan. Stat. Ann. section 75-4318(a); Ky. Rev. Stat. Ann. section 61.805(2)(d); Miss. Code Ann. section 25-41-3(a); Mo. Rev. Stat. section 610.010(2); Nev. Rev. Stat. section 241.015(2); S.C. Code Ann. section 30-4-20(a); Utah Code Ann. section 52-4-2(2).

63 See, e.g., Alaska Stat. section 44.62.310(a); Colo. Rev. Stat. section 24-6-402(1); Del. Code Ann. title 29, section 10002(a); Idaho Code section 67-2341(4); Me. Rev. Stat. Ann. title 1, section 402(2); N.H. Rev. Stat. Ann. section 91-A:1-a; Okla. Stat. title 51, section 24A.3(2).

64 N.J. Rev. Stat. section 10:4-8(a). See also Iowa Code section 21.2(1)(c) (defining a "governmental body" as a "multimembered body formally and directly created by one or more boards, councils, commissions, or other governing bodies" which were themselves created by state statute or executive order).

65 20 U.S.C. section 1232g.

66 20 U.S.C. section 1232g(b)(1). Some states have enacted their own versions of the Buckley Amendment that may present an additional hurdle. *See, e.g., Florida State University v. Hatton*, 672 So.2d 576 (Fla. App. 1st Dist. 1996).

67 20 U.S.C. section 1232g(a)(4)(A).

68 20 U.S.C. section 1232g(a)(4)(B).

69 *Red & Black Publishing Co.*, 427 S.E.2d at 261.

70 *Id.* at 259-60.

71 *Id.* at 261.

72 *Id.* See also *Doe v. Red & Black Publishing Co.*, 437 S.E.2d 474 (Ga. 1993) (affirming without opinion a trial court finding that campus judicial hearing records involving a student accused of "gay bashing" are open under state law).

73 *Shreveport Professional Chapter of the Society of Professional Journalists v. Louisiana State University*, No. 393,332, slip op. (First Judicial District, Caddo Parish, LA. March 4, 1994). See also *Selkirk v. University of Oklahoma*, No. CJ 94-1514 BH (Dist. Ct. Cleveland County Nov. 7, 1994).

74 Id. at 15-16.

75 Family Educational Rights and Privacy Act, Final Rule, 60 Fed. Reg. 3464 (1995).

76 Id. at 3465.

77 See *Student Bar Association v. Byrd*, 239 S.E.2d 415, 419 (N.C. 1977)("The Buckley Amendment does not forbid such disclosure of information concerning a student ...," it "simply cuts off federal funds, otherwise available to an educational institution which has a policy or practice of permitting the release of such information." The court concluded that when a state freedom of information law provides a right of access to government information, FERPA creates no conflict with that law.)

78 20 U.S.C. section 1232g(a)(4)(A)(i).

79 See, e.g., M.D. State Gov't Code Ann. section 10-614(b)(3)(iii) (stating that if a records custodian denies public access to any record, it *shall* permit inspection of any part of the record that is subject to inspection and is *reasonably severable*) (emphasis added).

80 Letter from Richard Riley, Secretary of the U.S. Department of Education, to Nancy Kassebaum et al., United States Senator (January 10, 1995) (on file with Student Press Law Center).

81 Family Educational Rights and Privacy Act, Final Rule, 60 Fed. Reg. 3464, 3465 (1995).

82 685 P.2d 1193 (Cal. 1984).

83 *Id.* at 1195.

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84 *Id.* at 1201. The *Peterson* court relied on the student's status as a business invitee in making this determination. Id. at 1197. Other jurisdictions have also held the school-student relationship to be that of landowner-invitee and have imposed all the duties of this relationship on the school. See *Johnson v. State*, 894 P.2d 1366 (Wash. 1995); *Nero v. Kansas State University*, 861 P.2d 768 (Kan. 1993); *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991); *Jesik v. Maricopa Community College*, 611 P.2d 547 (Ariz. 1980); *Isaacson v. Husson College*, 297 A.2d 98 (Me. 1972); *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983).

85 *Id.* at 1194-95.

86 *Id.* at 1201.

87 *Id.*

88 See *Mullins v. Pine Manor College*, 449 N.E.2d 331 (Mass. 1983)(college liable for on-campus rape of student where school officials had foreseen risk of crime); *Furek v. University of Delaware*, 594 A.2d 506 (Del. 1991)(university liable for injuries suffered as the result of fraternity hazing because incident was foreseeable and fraternity was under university's control); *Brown v. North Carolina Wesleyan College*, 309 S.E.2d 701 (N.C. 1983)(school not liable for abduction, rape and murder of student where no "repeated course of criminal activity" existed to render crime foreseeable)

89 *Nero v. Kansas State University*, 861 P.2d 768, 782 (Kan. 1993).

90 *See Cox Broadcasting Co. v. Cohn*, 420 U.S. 469 (1975).

APPENDIX

ALL STATUTES CURRENT AS OF JUNE 1996

State Open Records Law Citations

Alabama	Ala. Code section 36-12-40
Alaska	Alaska Stat. sections 09.25.110 to 09.25.220
Arizona	Ariz. Rev. Stat. Ann. sections 39-121 to 39-122
Arkansas	Ark. Stat. Ann. sections 25-91-101 to 25-19-105
California	Cal. Gov't Code sections 6250 to 6268
Colorado	Colo. Rev. Stat. sections 24-72-201 to 24-72-309
Connecticut	Conn. Gen. Stat. Ann. sections 1-15 to 1-21l
Delaware	Del. Code Ann. tit. 29, sections 10001 to 10005
D.C.	D.C. Code Ann. sections 1-1521 to 1-1529
Florida	Fla. Stat. Ann. sections 119.01 to 119.15
Georgia	Ga. Code Ann. sections 50-18-70 to 50-18-76
Hawaii	Haw. Rev. Stat. sections 92-1; 92-21 to 92-71; 92F-1 to 92F-42
Idaho	Idaho Code sections 9-337 to 9-348
Illinois	5 Ill. Comp. Stat. 140/1 to 140/11
Indiana	Ind. Code sections 5-14-3-1 to 5-14-3-10
Iowa	Iowa Code sections 22.1 to 22.13
Kansas	Kan. Stat. Ann. sections 45-215 to 45-225
Kentucky	Ky. Rev. Stat. Ann. sections 61.870 to 61.991
Louisiana	La. Rev. Stat. Ann. sections 44:1 to 44:42
Maine	Me. Rev. Stat. Ann. tit. 1, sections 401 to 410
Maryland	Md. State Gov't Code Ann sections 10-611 to 10-628
Massachusetts	Mass. Gen. Laws Ann. ch. 4, section 7, cl. 26; ch. 66, sections 10 to 18
Michigan	Mich. Stat. Ann. sections 4.1801(1) to 4.1801(16)
Minnesota	Minn. Stat. Ann. sections 13.01 to 13.99
Mississippi	Miss. Code. Ann. sections 25-61-1 to 25-61-17
Missouri	Mo. Rev. Stat. sections 109.310; 610.010 to 610.150
Montana	Mont. Code. Ann. sections 2-6-101 to 2-6-111; 2-6-201 to 2-6-202; 22-1-1103, and Article II, section 9 of the Montana Constitution
Nebraska	Neb. Rev. Stat. sections 84-712 to 84-712.09
Nevada	Nev. Rev. Stat. Ann. section 239.005-239.330
New Hampshire	N.H. Rev. Stat. Ann. section 91-A:1 to 91-A:8
New Jersey	N.J. Stat. Ann. section 47:1-1 to 47:1A.4
New Mexico	N.M. Stat. Ann. section 14-2-1 to 14-2-12
New York	N.Y. Pub. Off. Law section 84 to 90; 91 to 99
North Carolina	N.C. Gen. Stat. section 132-1 to 132-10
North Dakota	N.D. Cent. Code section 44-04-18 to 44-04-18.7, and Article XI, section 6 of the North Dakota Constitution
Ohio	Ohio Rev. Code Ann. section 149.43 to 149.44

State Open Records Law (continued)

Oklahoma	Okla. Stat. Ann. tit. 51, section 24A.1 to 24A.21
Oregon	Or. Rev. Stat. section 192.410 to 192.530
Pennsylvania	Pa. Stat. Ann. tit. 65, section 66.1 to 66.4
Rhode Island	R.I. Gen. Laws section 38-2-1 to 38-2-14
South Carolina	S.C. Code Ann. section 30-4-10 to 30-4-110
South Dakota	S.D. Codified Laws Ann. section 1-27-1 to 1-27-19
Tennessee	Tenn. Code Ann. section 10-7-503 to 10-7-508; 10-8-101 to 10-8-103
Texas	Tex. Gov't Code Ann. 552.001 to 552.353
Utah	Utah Code Ann. section 63-2-101 to 63-2-909
Vermont	Vt. Stat. Ann. tit. 1 section 315 to 320
Virginia	Va. Code Ann. section 2.1-340 to 2.1-346.1
Washington	Wash. Rev. Code Ann. section 42.17.010 to 42.17.350
West Virginia	W.Va. Code section 29B-1-1 to 29B-1-7
Wisconsin	Wis. Stat. Ann. section 19.31 to 19.39
Wyoming	Wyo. Stat. section 16-4-201 to 16-4-205

State Open Meetings Law Citations

Alabama	Ala. Code section 13A-14-2
Alaska	Alaska Statute sections 44.62.310 to 44.62.312
Arizona	Ariz. Rev. Stat. Ann sections 38-431 to 38-431.09
Arkansas	Ark. Stat. Ann. sections 25-19-106
California	Cal. Gov't Code sections 9027 to 9031 (assembly & senate), 11123 to 11132 (state agencies), 54950 to 54962 (local agencies)
Colorado	Colo. Rev. Stat. sections 24-6-401, 24-6-402
Connecticut	Conn. Gen. Stat. Ann. sections 1 to 21
Delaware	Del. Code Ann. tit. 29, sections 10001 to 10005
D.C.	D.C. Code Ann. section 1-1504
Florida	Fla. Stat. Ann. section 286.011
Georgia	Ga. Code Ann. sections 50-14-1 to 50-14-4
Hawaii	Haw. Rev. Stat. sections 92-1 to 92-13
Idaho	Idaho Code sections 67-2340 to 67-2347
Illinois	5 Ill. Rev. Stat. 12011 to 12013
Indiana	Ind. Code Ann. sections 5-14-1.5-1 to 15-14-1.5-7
Iowa	Iowa Code Ann. section 21.1 to 21.11
Kansas	Kan. Stat. Ann. sections 75-4317 to 75-4320
Kentucky	Ky. Rev. Stat. sections 61.805 to 61.850
Louisiana	La. Rev. Stat. Ann. sections 42:4.1 to 42:11
Maine	Me. Rev. Stat. Ann. tit. 1 sections 401 to 410
Maryland	Md. State Gov't Code Ann. sections 10-502 to 10-508
Massachusetts	Mass. Gen. Laws Ann. Ch. 30A, sections 11A, 11A 1/2 (state); Ch. 34, sections 9F, 9G (county), Ch. 39, sections 23A, 23B (municipal)

State Open Meetings Law (continued)

Michigan	Mich. Stat. Ann. section 4.1800(11) to (23)
Minnesota	Minn. Stat. Ann. section 471.705
Mississippi	Miss. Code Ann. sections 25-41-1 to 25-41-17
Missouri	Mo. Ann. Stat. sections 610.010 to 610.022
Montana	Mont. Const. Art. II section 9; Mont. Code. Ann. sections 2-3-201 to 2-3-221
Nebraska	Neb. Rev. Stat. section 84-1408 to 84-1414
Nevada	Nev. Rev. Stat. sections 241.010 to 241.040
New Hampshire	N.H. Rev. Stat. Ann. sections 91-A:1 to 91-A:8
New Jersey	N.J. Stat. Ann. sections 10:4-6 to 10:4-21
New Mexico	N.M. Stat. Ann. sections 10-15-1 to 10-15-4
New York	N.Y. Pub. Off. Law sections 95 to 111
North Carolina	N.C. Gen. Stat. section 143-318.9 to 143-318.18
North Dakota	N.D. Const. Art. XI, section 5; N.D. Cent. Code sections 44-04-19 to 44-04-21
Ohio	Ohio Rev. Code Ann. section 121.22
Oklahoma	Okla. Stat. Ann. tit. 25, sections 303 to 314
Oregon	Or. Rev. Stat. sections 192.610 to 192.690
Pennsylvania	Pa. Stat. Ann. tit. sections 271 to 286
Rhode Island	R.I. Gen. Laws sections 42-46-1 to 42-46-13
South Carolina	S.C. Code Ann. sections30-4-60 to 30-4-110
South Dakota	S.D. Codified Laws Ann. sections 1-25-1 to 1- 25-4
Tennessee	Tenn. Code Ann. sections 8-44-101 to 8-44-201
Texas	Tex. Gov't Code Ann. sections 551.001 to 551.146
Utah	Utah Code Ann. sections 52-4-1 to 52-4-9
Vermont	Vt. Stat. Ann. tit.1 sections 311 to 314
Virginia	Va. Code Ann. section 2.1-343 to 2.1-346.1
Washington	Wash. Rev. Code Ann. sections 42.30010 to 42.30.920
West Virginia	W.Va. Code sections 6-9A-1 to 6-9A-7
Wisconsin	Wis. Stat. Ann. sections 19.81 to 19.98
Wyoming	Wyo. Stat. Ann. sections 16-4-401 to 16-4-407

State Open Police Log Laws

California	Cal. Ed. Code sections 67380 and 94380
Massachusetts	Mass. Ann. Laws, ch. 41, section 98F
Pennsylvania	24 Penn. Stat. Ann. section 2502-3
Tennessee	Tenn. Code Ann. section 49-7-2206
West Virginia	W. Va. Code section 18B-4-5a
Virginia	Va. Code Ann. section 23-232.2
See also:	
Georgia	Ga. Code Ann. section 35-3-36

State Campus Crime Statistics Laws

California	Cal. Education Code sections 67380-67382.
Connecticut	Conn. Gen. Stat. Ann. sections 10a-55 to -55c
Delaware	Del. Code Ann. tit. 14, section 9003-05
Florida	Fla. Stat. Ann. sections 240.2683, 240.3815
Louisiana	La. Rev. Stat. Ann. section 17:3351 C.
Massachusetts	Mass. Ann. Laws ch. 22, section 16
Pennsylvania	Pa. Stat. Ann. tit. 24, sections 2502-1 to -5
Tennessee	Tenn. Code Ann. sections 49-7-2203
Virginia	Va. Code Ann. section 23-9.1:1
Washington	Wash. Rev. Code Ann. section 28B.10.569
Wisconsin	Wis. Stat. Ann. section 36.11 (22)

Sample State Open Records Law Request Letter

Note: This letter may be used as a model to obtain public records using your state open records law. The highlighted portions should be changed to conform to the relevant provisions of your state's law and the specifics of your situation.

September 3, 1996

Mr. Norman Mallard
Chief of Campus Security
State College
876 Donor Hall
Your City, Anystate 11223

Dear Mr. Mallard:

Pursuant to the state open records law, **Anystate Rev. Stat. secs. 40.5 to 43.1**, I write to request access to and a copy of **the incident report and any other documents prepared or collected by your department relating to the assault that occurred outside Memorial Library on the evening of April 5, 1996.** If your office does not maintain these public records, please let me know who does and include the proper custodian's name and address.

I agree to pay any reasonable copying and postage fees of not more than **$5**. If the cost would be greater than this amount, please notify me. Please provide a receipt indicating the charges for each document.

As provided by the open records law, I will expect your response within **ten (10) business days**.

If you choose to deny this request, please provide a written explanation for the denial including a reference to the specific statutory exemption(s) upon which you rely. Also, please provide all segregable portions of otherwise exempt material.

Please be advised that I am prepared to pursue whatever legal remedy necessary to obtain access to the requested records. I would note that willful violation of the open records law can result in a **fine of up to $500 and the award of court costs and attorney fees.**

Thank you for your assistance.

Sincerely,

Jessica N. Hiestand
Editor
Campus Voice
State College
3452 Union Hall
Your City, Anystate 11223

(505) 555-1234

BEST COPY AVAILABLE

Campus Crime Reporting Resources

Student Press Law Center

The only organization in the country devoted exclusively to protecting and educating the student media about their freedom of expression and freedom of information rights. The nonprofit SPLC provides free legal help to approximately 1,500 student journalists and their advisers each year.

1101 Wilson Boulevard, Suite 1910
Arlington, VA 22209
(703) 807-1904
e-mail: splc@splc.org

Website: http://www.splc.org

Society of Professional Journalists

The largest professional association of journalists in America. SPJ sponsors student chapters at colleges and universities throughout the country.

P.O. Box 77
Greencastle, IN 46135-0077
(317) 653-3333

Website: http://town.hall.org/places/spj

Freedom of Information Committee: Kyle Niederpruem, chair (317) 633-9385

Campus Courts Task Force: SPJ-led coalition of 14 professional press and academic organizations formed in 1993 to challenge restrictions on access to campus judicial proceedings.

Gordon "Mac" McKerral, chair (334) 670-3289

Task Force Members:
American Society of Newspaper Editors: Robert Giles (313) 222-2247
AP Managing Editors Association: Rich Archbold (310) 499-1285
Society for Collegiate Journalists: William Lawbaugh (301) 447-6122
Associated Collegiate Press: Albert "Flip" Deluca (540) 568-6481
Association for Education in Journalism and Mass Communication: Maurine Beasley (301) 405-2413
Association of Schools of Journalism and Mass Communications: Doug Anderson (602) 965-5011
Black College Communications Association: Dr. Clark Wilson (202) 806-7860
College Media Advisers: Ron Spielberger (901) 678-2403
National Association of Black Journalists: Arthur Fennell (610) 668-5721
National Conference of Editorial Writers: Rena Pederson (214) 977-8222
Radio and Television News Directors Association: David Bartlett (202) 659-6510
Reporters Committee for Freedom of the Press: Jane Kirtley (703) 807-2100
Student Press Law Center: Mark Goodman (703) 807-1904

Reporters Committee for Freedom of the Press

Assists reporters and editors for commercial media and produces publications on press law issues.

1101 Wilson Blvd., Suite 1910

Arlington, VA 22209

(703) 807-2100

Website: http://www.rcfp.org/rcfp/

Campus Crime Reporting Resources (continued)

Security on Campus

Nonprofit group working to curb campus violence, promote campus crime awareness and assist crime victims and their families.

215 West Church, Suite 200
King of Prussia, PA 19406-3207
(610) 768-9330

Website: http://www.korrnet.org/soc/

Association for Student Judicial Affairs

International professional association of student judicial affairs officials.

P.O. Box 2237
College Station, TX 77841-2237
Saunie Schuster, president (614)292-5768

Website: http://stulife.tamu.edu/asja/

U.S. Department of Education

For Buckley Amendment Questions:

LeRoy S. Rooker
Director, Family Policy Compliance Office
Dept. of Education
600 Independence Avenue, SW
Washington, D.C. 20202-4605
(202) 260-3887

For Campus Security Act Questions:

Paula Husselmann
Program Specialist
Dept. of Education
400 Maryland Avenue, SW
Washington, DC 20202-5346

For Official Comment:

Office of Public Affairs (202) 401-1576

For Other Questions:

(800) 433-3243

To report violations of the Campus Security Act, use contact information on pages # - #.

Other Resources Available Online

Cops and Courts Reporters Directory

National listing of police and court reporters.

Website: http://www.reporters.net/ccr

Cops and Courts Reporters Listserve

Fairly low-traffic discussion list for crime and court reporters (mainly commercial media, but welcome college crime reporters or other "lurkers"). To subscribe send a message to: majordomo@reporters.net. In the message section, write "subscribe ccr-l" without the quotations.

Freedom of Information Law Resource List

An extensive list of FOI resources is maintained by Prof. Barbara Fought of Syracuse University. It includes organizations, books, hotlines, Internet resources, etc, and is available at:

Website: http://web.syr.edu/~bcfought/foires.html

Campus Crime Reporting Resources (continued)

National Freedom of Information Coalition

A coalition of state freedom of information groups.

Website: http://www.reporters.net/nfoic

Student Journalist Discussion List (Stumedia)

The main discussion group for student journalists. Moderate to high traffic. Freedom of information topics and campus crime reporting are a regular topic.

Website: http://www.journalism.sfsu.edu/www/internet/mail/stumedia.html

U.S. Department of Education Office of Postsecondary Education Regional Offices (as of May 1996)

REGION I — (617) 223-9328
Ralph Seastrom, Acting Director
J.W. McCormack Post Office & Courthouse,
Room 502
Boston, MA 02109
STATES: Maine, Vermont, New Hampshire, Massachusetts, Connecticut, Rhode Island

REGION II — (212) 264-4022
Ann Marie Cimino, Acting Director
75 Park Place, Room 1206
New York, NY 10007
STATES: New York, New Jersey, Puerto Rico, Virgin Islands

REGION III — (215) 596-1018
Nancy Klingler, Acting Director
3535 Market Street, Room 16200
Philadelphia, PA 19104
STATES: Pennsylvania, Maryland, Virginia, West Virginia, Delaware, District of Columbia

REGION IV — (404) 331-0556
Judith Brantley, Acting Director
P.O. Box 1692
Atlanta, GA 30301
STATES: Kentucky, Tennessee, North Carolina, Mississippi, Alabama, Georgia, Florida, South Carolina

REGION V — (312) 886-8767
B. Ann Hageman, Acting Director
111 N. Canal Street, Suite 840
Chicago, IL 60606
STATES: Minnesota, Wisconsin, Michigan, Ohio, Indiana, Illinois

REGION VI — (214) 767-3811
Samuel Booker, Director
1200 Main Tower, Suite 2150
Dallas, TX 75202
STATES: New Mexico, Oklahoma, Texas, Arkansas, Louisiana

REGION VII — (816) 880-4053
Steve Dorssom, Branch Chief
10220 NW Executive Hills Blvd., Suite 900
Kansas City, MO 64153-1367
STATES: Missouri, Kansas, Nebraska, Iowa

REGION VIII — (303) 844-3677
Harry Shriver, Acting Director
1244 Speer Blvd., Suite 310
Denver, CO 80204-3582
STATES: Colorado, Utah, Wyoming, South Dakota, North Dakota, Montana

REGION IX — (415) 437-8293
Benito Botello, Acting Director
50 United Nations Plaza, Room 268
San Francisco, CA 94102-4987
STATES: Arizona, Nevada, California, Hawaii, The Pacific Islands

REGION X — (206) 220-7820
Susan Bowder, Acting Director
915 Second Avenue, Room 3388
Seattle, WA 98174-1099
STATES: Idaho, Oregon, Washington, Alaska

UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

May 1996 GEN-96-11

Summary: This letter provides an overview of the regulatory provisions, and guidance to institutions on how to receive technical assistance in administering the campus security regulations, and the Department's enforcement policy regarding them.

Reference: Regulations published April 29, 1994 and June 30, 1995; Chapter 3 of the Federal Student Financial Aid Handbook.

Dear Colleague:

The purpose of this letter is to provide you with an overview of the campus security regulations and to bring you up-to-date on various aspects of an institution's administration of them. Originally, the campus security regulations were published in the Federal Register on April 29, 1994 and were effective July 1, 1994. Subsequently, amendments to these regulations were published on June 30, 1995 and became effective on July 31, 1995. These final regulations superseded previous "Dear Colleague Letters" addressing campus security requirements. This letter provides information regarding to whom institutions, parents, and students should address their questions about these regulations, to whom an individual should raise concern about an institution's compliance with the regulations, and how the U.S. Department of Education will respond to allegations of an institution's noncompliance with the campus security regulations.

Overview

By September 1 of each year, an institution must distribute: (1) to current students and employees: an annual security report containing certain statistics, policies, and a description of programs that promote campus safety and (2) to prospective students and employees: information about the availability of the report, a summary of the report, and an opportunity to request a copy of the report.

Examples of what must be included in the report are:

I. Statistics on reports of on-campus murders, sex offenses, robberies, aggravated assaults, burglaries, and motor vehicle thefts; and arrests for weapons possession and liquor and drug abuse violations;

II. Policies regarding security, access to campus residences and other facilities, and campus law enforcement;

III. Procedures for reporting crimes and other emergencies;

IV. Information on campus sexual assault and rape awareness programs, procedures to follow when a sex offense occurs, disciplinary action procedures, counseling opportunities, and notification to students that the institution will make changes in a victim's academic and living situation if reasonably possible;

V. Policies on the use, possession and sale of alcoholic beverages and illegal drugs; and

VI. A description of programs informing the campus community about alcohol and drug abuse education, crime prevention and campus security policies.

With limited exceptions, the regulations do not prescribe policies and procedures for institutions to follow, but rather require that disclosures be made concerning those policies and procedures.

An institution must make timely warning reports to the campus community on certain crimes that represent a continuing threat to students and employees and that were reported to officials with significant responsibility for student and campus activities, campus police, or local police. Campus officials with "significant counseling responsibility," however, are not subject to the timely warning requirement. This exception permits the official to provide confidential assistance to a crime victim, without the competing obligation to provide an immediate report of criminal activity to the campus community. This exception to the timely warning requirement does not apply to the institution's statistical reporting obligations. All officials with significant responsibility for campus and student activities

are required to provide information for preparation of the annual statistical report.

Family Education Rights and Privacy Act (FERPA)

It has been brought to the Secretary's attention that there is some confusion regarding the interplay of the disclosures required under the Campus Security Act and the prohibitions against the disclosure of information from education records contained in the Family Education Rights and Privacy Act (FERPA). As explained in the preamble to the campus security regulations, FERPA provides no barrier to compliance with the disclosures under the campus security regulations.

Reporting of statistics

The reporting of crime statistics by an institution of the occurrence of crimes on campus does not violate FERPA. FERPA protects the nonconsensual disclosure of personally identifiable information from education records; FERPA does not protect statistical information.

Timely warning provision

FERPA does not preclude an institution's compliance with the timely warning provision of the campus security regulations. FERPA recognizes that information can, in case of an emergency, be released without consent when needed to protect the health and safety of others (34 C.F.R. Sections 99.31(b)(6) & 99.36). In addition, if institutions utilize information from the records of a campus law enforcement unit to issue a timely warning, FERPA is not implicated as those records are not protected by FERPA (20 U.S.C. Section 1232g(a)(4)(B)(ii)).

Informing the accuser and the accused of the outcome of a disciplinary proceeding

The Student Right-to-Know and Campus Security Act amended FERPA to allow institutions to disclose to the victim of an alleged crime of violence the results of a disciplinary proceeding brought against a student accused of the crime, without the prior consent of the accused. This disclosure is limited to the alleged victim, who should be informed that the information may not be disclosed to the public generally (20 U.S.C. Section 1232g(b)(6)).

Reporting crimes referred to a disciplinary committee
An institution is not relieved of compliance with the reporting requirements of the campus security regulations when the institution refers a matter to a disciplinary committee, rather than to the institution's law enforcement unit or directly to the local authorities.

Technical Assistance
Staff of the Department's Customer Support Branch in the Office of Postsecondary Education are trained to provide technical assistance to institutions in administering campus security regulations. The telephone number and hours of operation for the Customer Support Branch are 1-800-433-7327, 9:00a.m.-5:00p.m. Eastern time, Monday through Friday. After-hours calls will be accepted by an automated voice response system. Callers leaving their name and telephone number will receive a return call the next business day. You may also fax an inquiry to (202)260-4199.

The Department's Family Compliance Office is responsible for administering FERPA. An institution with specific questions related to FERPA, needing technical assistance, or desiring to receive in-service training may contact the Family Policy Compliance Office, U.S. Department of Education, 600 Independence Avenue, SW, Washington, DC 20202-4605. Additionally, an institution may contact the office by electronic mail at FERPA@ED.GOV or by calling 202-260-3887.

Complaint Procedure
An individual desiring to file a complaint alleging that an institution is not complying with these regulations should contact the Director of the Regional Office that serves the State in which the institution is located. For this and other purposes, I have attached a list of names of Regional Directors, their addresses, and their telephone numbers.

When a complaint is filed against an institution alleging noncompliance with the campus security regulations, the Department will assess the complaint and determine the appropriate response. The Secretary recognizes that the campus security regulations represent new responsibilities for most institutions, and include issues that many will be addressing for the first time. If an institution has difficulties administering a provision of these regulations, the Department will provide

technical assistance so that violations can be corrected. If, however, an institution flagrantly or intentionally violates the campus security regulations, or fails to take corrective action, the Secretary will, when appropriate, take action against the institution by imposing sanctions against that institution. The type of sanction will depend upon the severity of the violations; possible sanctions include the assessment of fines, and in very severe violations, the limitation, suspension or termination of the institution from participation in the Title IV, HEA Programs.

The Secretary, with his colleagues in the higher education community, believes that students nationwide must have a safe environment in which to learn, and is committed to ensuring that the Campus Security Act of 1990 is implemented fully by postsecondary institutions.

Sincerely,

David A. Longanecker

Student Press Law Center
1101 Wilson Blvd., Suite 1910
Arlington, VA 22209